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THE AUSTRALIAN REGULATION OF FOREIGN DIRECT INVESTMENT: RECENT EXPERIENCE RELEVANT TO CANADIAN POLICIES

A report prepared by

William A. W. Neilson
Professor, Osgoode Hall Law School
of York University, Toronto

for

The Ontario ~~Legislative Assembly~~
Select Committee

on

ECONOMIC AND CULTURAL
NATIONALISM



October 1, 1973

PUBLISHED BY
THE SELECT COMMITTEE ON ECONOMIC
AND CULTURAL NATIONALISM
OF THE LEGISLATIVE ASSEMBLY OF ONTARIO

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Printed by J. C. Thatcher, Queen's Printer for Ontario.

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I. INTRODUCTION



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I. Introduction

1.1 *Request for Study.* By letter dated 9th July, 1973, the author was asked by the Chairman of the Select Committee to prepare a report on the Australian regulation of foreign investment. September 30th, 1973 was chosen as the date for submission of the study and a total of sixteen days were budgetted for its preparation. At the time I was on sabbatical leave from Osgoode Hall Law School, York University, visiting at Monash University, Melbourne.

1.2 *Australian scene.* In the past year, the treatment of foreign investment by the Commonwealth government has attracted international attention. On September 26th, 1972, the then Prime Minister, Mr. McMahon, announced his government's decision to introduce broad, new review procedures for the screening of certain foreign takeovers of resident-controlled firms. This was followed by the enactment in November, 1972 of the Companies (Foreign Take-Overs) Act on the eve of dissolution for the federal elections. As a result of the elections, the Labor Party formed the Government and since December 5th, 1972, they have been responsible for implementing this takeover legislation. This statute, several rulings in respect of overseas borrowings and the identification of a number of "sensitive" industries to be reserved for resident enterprises have been the principal forces of change in recent months.

1.3 *Terms of reference.* In light of these events and their relevance for Canadian policy towards foreign investment, the Committee requested that the report

- (1) "contain an analysis and evaluation of current Australian law, with appropriate references to any State laws of major significance;
- (2) "contain appropriate references to the legislative history of the Companies (Foreign Take-Overs) Act, and of any other laws of equal significance; and
- (3) "emphasize the aspects of Australian regulation and experience which are most relevant to Canadian circumstances."

1.4 *Methodology.* With the obvious constraints of time, every effort was made to study the pertinent legislation, parliamentary debates, available commentary and relevant statistics. Interviews were held with a number of Australians in the financial, governmental and academic areas and to these people, the author gratefully records his appreciation for their cooperation and assistance. The list of interviewees is contained in Appendix A, *infra*.

While there may be passing reference to the role of indigenous factors of a very specialized nature such as tax, incorporation and constitutional laws, there is no attempt here to analyse their influence on the shape and direction of economic activity in Australia today. Quite apart from personal reasons of competence and time, I have taken as my principal task the broader sweep of recent events in Australia and their implications for the host country attitude towards multinational corporations.

1.5 *Overall Conclusions.* In the past year, and particularly during the first eight months of 1973, Australia has accomplished a virtual turn-about in its treatment and assessment of foreign direct investment. This shift, if not reversal of policy, has been most pronounced in the handling of attempts by non-residents to acquire control of Australian businesses. With a handful of exceptions, it may be argued that a virtual freeze has descended on the acquisition of voting control by foreign interests in significant Australian-owned firms. An expansive interpretation has been accorded the Companies (Foreign Take-Overs) Act with the result that advantage is only infrequently taken of its apparent gaps or loopholes. The cumulative effect of decisions announced by the Treasurer under that Act in his screening of takeover proposals, combined with several "announcements of intention" by

him and several other Cabinet colleagues, have identified a number of "key sectors". These would appear to include pharmaceuticals, 'near-banking', building societies, insurance, real estate, consumer foods, 'new' technology, major retailing, energy resources and mining. It is generally appreciated that foreign takeover proposals in these fields are likely to encounter a negative response from the Treasury's Foreign Takeover Committee. Such expectations have materially affected the readiness of overseas investors to consider pushing ahead with takeover proposals in these areas. This is not to deny that each case is treated separately and that apparent exceptions have occurred. However, they are exceptions.

In the case of investments in property development and mining by foreigners, a form of moratorium has been introduced pending the crystallization of Commonwealth priorities. The concern here appears to go beyond the prospect of further non-resident takeovers to new and separate investment by these interests.

There is also evidence of a growing relationship between approval mechanisms for overseas borrowings as administered by the Reserve Bank of Australia and the screening authority made available under the takeover legislation—extending in some cases to capital investment proposals for ventures outside the terms of the Companies (Foreign Take-Overs) Act. The result is to strengthen further the cautionary lessons of the screening legislation and broaden the range of formal review attaching to investment by non-residents. It is also quite distinct from the more visible results of the Reserve Bank's administration of exchange controls in respect of overseas borrowings.

Official policy is also moving towards the favouring of local equity participation in foreign controlled companies (for example, the auto manufacturers) and by the restructured Australian Industry Development Corporation.

The overall impression is one of very rapid and forceful change at national level. Given existing Canadian controls and the proposals for a Foreign Investment Review Agency in Bill C-132 (Foreign Investment Review Act), it is suggested that the evolving Australian experience is of great significance to Canada. We would do well to maintain a watching brief as the Australian policy moves into its second year of operation.

**II. SUMMARY OF AUSTRALIAN REGULATION TO
SEPTEMBER 26, 1972**

II. Summary of Australian Regulation to September 26, 1972

2.1 *Open Door Policy.* In this part, we will review rather briefly the development of official policy in Australia towards overseas investment leading up to the "revised" policy announced in 1972.¹ Subject to certain wartime or emergency measures and limited *ad hoc* restrictions on foreign participation, the general policy has been one of open invitation to foreign investors.

2.2 *Capital issues control, 1939–1953.* All investment in Australia, domestic or overseas in origin, was regulated by Capital Issues Control as a wartime measure from October 13th, 1939. As a result until the last vestige of control was removed in 1953, the establishment of companies and increases in capital were subject to the Treasurer's consent. During the same period, foreign exchange controls also were in operation.

2.3 *Investment Policy, 1953–1965.* In this postwar period, the prevailing official attitude was illustrated by an excerpt from a 1958 Treasury pamphlet on foreign investment:

"The Australian Government welcomes overseas investment . . . particularly where it is of a kind likely to help in the balanced development of Australia's resources and brings the skills and 'know-how' needed for the successful fulfilment of the project in which the investment is made."²

By 1968, and reflecting changing concerns, the Treasury pamphlet included a new paragraph on *local participation*:

"Whilst there are no legislative provisions requiring local participation in the capital or management of companies set up in Australia by overseas interests, we want some local participation both in ownership and management . . . Although no rules are laid down, the Government feels that fears and misunderstandings are least when this course is followed."³

It may be doubted, after perusal of national statistics (see paragraph 2.8, *infra*), whether the foreign investors paid much attention to this exhortation in terms of offering equity participation to Australians.

2.4 *Capital Borrowings Guidelines, 1965–1969.* Beginning in 1965, the Treasury issued guidelines to avoid overseas interests making excessive demands in the local capital market, largely as a response to offset U.S., and later U.K., measures to restrict the flow of capital abroad, including Australia. In April, 1968, the Treasurer (Mr. McMahon) "restated the government's attitude to overseas investment as a *broad financial policy, not one aimed at regulating the type of investment*."⁴ (My emphasis.)

By December of that year, however, the Treasurer announced that the Reserve Bank, as a general rule, was to administer the guidelines policy to provide

". . . in the case of new (foreign-affiliated) ventures, that *access to Australian fixed interest funds should be linked to the provision . . . made for equity participation by Australian investors*"⁵ (My emphasis).

¹Considerable assistance in this part has been given by a staff background paper (1973) prepared for the Senate Select Committee on Foreign Ownership and Control of Australian Resources.

²*Id.*, quoted at p. 2.

³*Id. Cf.* "Some Guiding Principles of Good Corporate Behaviour for Subsidiaries in Canada of Foreign Companies", issued by Department of Trade and Commerce, Ottawa, 1967.

⁴*Id.*, at p. 4.

⁵*Ibid.*

2.5 *Revised Investment and Takeovers Guidelines, September, 1969.* Within nine months, it was felt necessary by the Commonwealth government to announce a new guidelines policy.⁶ For our purposes, the principal features were:

- (1) The continuation of the requirement that prior approval be obtained from the Reserve Bank for any proposed borrowings within Australia by overseas interests, or companies in which more than 25% of the shares are held by non-residents. Approval would generally be automatically given for borrowing in respect of normal requirements for working capital, bridging finance, and financing export transactions.
- (2) The facilities for borrowing by foreign-owned companies in business in Australia for less than four years were tighter than for those established for more than four years.
- (3) If funds were to be sought from within Australia additional to the proceeds of new share issues and the borrowings already noted, then local equity participation was to play a new, significant role. A company was allowed to raise in Australia a proportion of its total new borrowings according to the proportion of Australian-held equity in the company, with the local equity being weighted on a four to three basis. Thus, the proportion for a business with a 30 per cent. Australian equity was 40 per cent. The declared aim was to provide an increased inducement to overseas-controlled firms to admit or to increase local equity participation.

There is little evidence to suggest that this purpose was realized, even in a small way.⁷

- (4) The takeover code was strengthened (by State amendment of their Companies Acts and federal changes to the Companies Ordinances of the Australian Capital Territory and Northern Territory) to provide for disclosure of substantial shareholdings and to ensure a more open and fair manner of procedure in takeover proposals, whether by local or foreign interests.
- (5) The government expressly reserved the right to prevent foreign takeovers considered "in the circumstances of the case . . . to be bad in the national interest." This power was to remain in unlegislated form, to be used on "rare occasions" as it was not possible "to define further classes or fields of enterprise which . . . should not, in the national interest, pass to overseas ownership."⁸

2.6 *Restrictions on Foreign Participation in Particular Industries.* Compared to Canadian experience,⁹ there are very few statutory controls on non-resident participation in

⁶Speech by Prime Minister Gorton to House of Representatives, Sept. 16th, 1969. The measures were reviewed in 21 International Financial News Survey 307-308 (Sept. 26th, 1969; published by the International Monetary Fund) and characterized as involving "[o]nly moderate changes in existing policies . . . The 'opendoor' philosophy is preserved intact" (at p. 307). The summary here presented is drawn from the Prime Ministerial statement, Senate Select Committee staff background paper, *supra* note 1, and the I.F.N. Survey review. Regrettably, time has not allowed for a detailed study to assess the actual market effects of the measures as they relate to Australian equity participation. Preliminary investigations revealed, in any event, that up-to-date data are lacking.

⁷"The policy of the early sixties of polite persuasion probably led few overseas companies to share ownership with locals. Nevertheless, it had the advantage of deterring nobody from investing in Australia at a time when Australia needed capital", *per* Senate Select Committee staff background paper, *supra* note 1, at p. 5. Overseas controlled manufacturing companies would appear to have local equity only infrequently per Tables I-III submitted by Professor T. G. Parry to Senate Select Committee on Foreign Ownership and Control, Proceedings, July 12, 1972 at pp. 278-9.

⁸Prime Ministerial speech, Sept. 16th, 1969, at p. 5.

⁹Summarized in two helpful publications of the Foreign Investment Division, Office of Economics, Department of Industry, Trade and Commerce, Ottawa; *Selected Readings in Laws and Regulations Affecting Foreign Investment in Canada, March 1972* and *Extracts from Provincial Laws and Regulations Affecting Foreign Investment in Canada, November, 1972.*

specific industries in Australia. The official policy, until very recently, has been to allow controlling positions in new or acquired ventures in all but a handful of business areas.

The federal measures that are restrictive involve limits in respect of foreign ownership in *broadcasting and television and civil aviation*.¹⁰ For instance, a 1969 amendment of the Broadcasting and Television Act 1942-71 provides that:

“A licence is subject to a condition that, at all times during the currency of the licence,

- (a) shares representing not less than 80% of the issued capital of the licensee will be beneficially owned by persons each of whom is either a resident of Australia (other than a company) or a company controlled by persons (other than companies) who are residents of Australia; and
- (b) shares representing more than 15% of the issued capital of the licensee will not be beneficially owned by a person (other than a company) who is not a resident of Australia or by a company controlled, directly or indirectly, by persons who are not residents of Australia.”¹¹

The parallel provision for civil aviation reads as follows:

“Unless the Director-General [of Civil Aviation] otherwise directs, a licence of certificate [required to operate an airline service] . . . shall not be issued to a person who is not a British subject ordinarily resident in Australia or a corporation substantially owned and effectively controlled by British subjects ordinarily resident in Australia.”¹²

In 1972 the potential significance of the two tests arose in a reference by the federal Senate to its Standing Committee on Industry and Trade. The reference concerned the proposed takeover of *Ansett Transport Industries Ltd.* by *Thomas Nationwide Transport Ltd.*¹³ This bid will be the subject of separate comment in the discussion of state legislation, *infra* at paragraph 2.10. Ansett's interests include an airline and two television broadcasting licences. The question of foreign ownership and control was thus of some importance since it was accepted that there was a sizeable foreign participation in Thomas' shareholdings.¹⁴

The Committee was asked, *inter alia*, to ascertain the degree of non-Australian ownership, direct or indirect, of the issued share capital of the two companies. The Senators' observations in this connection are worth noting here. It proved impossible to determine “with

¹⁰For a brief discussion, somewhat dated, see Donovan, “Foreign Investment in Australia” in *Legal Aspects of Foreign Investment* (Friedmann and Pugh, (eds.) 1959) 10 at pp. 17-18.

¹¹S. 6 Commonwealth Act No. 31, 1969, adding s. 92F to the Broadcasting and Television Act 1942-71.

¹²Air Navigation Regulation 322(1), pursuant to Air Navigation Act, 1920-71.

¹³Parliamentary Paper No. 35 (May, 1972). The takeover attempt was the year's corporate cause celebre involving Sydney-based TNT and Melbourne-located A.T.I. The bid was vehemently fought by the A.T.I. board headed by Sir Reginald Ansett and eventually withdrawn after the Victorian government introduced a bill which, *inter alia*, would have launched a parliamentary inquiry and hamstrung any attempt to utilize any controlling position acquired by the takeover: Select Committee (Ansett Transport Industries) Act 1972, discussed in C.C.H. Australian Securities Law Reporter at para. 70-008. Apparently the measure was without precedent in Australian history. Shortly thereafter, the same Parliament gave third reading to an omnibus takeover review measure, *Parliamentary Committees (Take-over Offers) Act 1972*, discussed in detail at para. 2.10 *infra*.

¹⁴The Committee tentatively concluded that non-Australian ownership in TNT could be at least 34% and about 10% in A.T.I. but in each case felt that these shares were widely dispersed. There was some concern that a degree of concentrated but deferred control would be possible in T.N.T. due to the existence of nearly 7 million share options. The non-resident shareholdings in T.N.T. clearly placed in jeopardy T.N.T.'s capacity to take on A.T.I.'s licences in aviation and television broadcasting. Committee's Report, *supra* note 13, at pp. 3-5.

certainty the extent to which shares held by Australian residents might be beneficially owned by persons overseas.”¹⁵

Legislation in New South Wales (Thomas' state of incorporation) and Victoria (Ansett's incorporating jurisdiction) provides that a substantial shareholder, that is, one holding 10 per cent. or more of the shares in a public company, must declare his interest.¹⁶ Shareholders falling below the 10 per cent. line need not disclose, nor apparently is there a compulsion on a beneficial owner of shares who is resident overseas to declare his interest, even if he is a substantial shareholder. In the words of the Standing Committee,

“[a] nominee company which holds shares on behalf of beneficial owners is not required to identify the beneficial ownership of such shares. The only duty of a nominee company in this respect is to notify the beneficial owner of the requirement for him to declare his interest.”¹⁷

The consequences were viewed as perilous for companies required to operate within the terms of foreign ownership legislation and most unsatisfactory if foreign equity limits are to be applied with assurance. The state Companies Acts and the national legislation, suggested the Committee, ought to require that information on the beneficial ownership of shares in any company ought to be readily available.¹⁸

On the question of a concentrated minority shareholding by foreign interests, the Committee recommended the amendment of the Air Navigation Regulation along the lines of the broadcasting provisions to provide “that no more than 15 per cent. of the voting power of an Australian firm holding an airline licence should be permitted to remain in the hands of any one foreign owner.”¹⁹

Action has not apparently followed on either proposal. The problems associated with determining the true beneficial ownership of shares thus remain and may assume larger significance in the future in takeover proposals before the review committee administering the Companies (Foreign Take-Overs) Act 1972.²⁰

Banking is the third sphere of activity in which foreign participation is restricted. Since the Second World War, it has been consistent federal policy to refuse entry to non-resident controlled or owned interests,²¹ thus leaving the Australia and New Zealand Banking Group Limited (A.N.Z.) as the only predominantly foreign-owned trading bank.²²

This administrative policy has been supplemented by the Banks (Shareholdings) Act 1972 providing for control of substantial interests in the shares of banks incorporated in Australia and authorized to carry on business under the Banking Act. In placing a ceiling

¹⁵*Id.* at pp. 22-23.

¹⁶Companies Acts, s. 69D, discussed in the Standing Committee's Report, *supra* note 13 at pp. 5-6 and in Mason and O'Hair, *Australian Company Law* (2nd ed., 1973), pp. 120-127. Recall reference to need for disclosure requirement by the then Prime Minister in 1969 at paragraph 2.5, *supra*.

¹⁷Committee's Report at p. 6. For a more complete discussion of substantial shareholdings, see C.C.H. Australian Corporate Affairs Reporter, paras. 8-500—8-550, particularly 8-530.

¹⁸*Id.* at p. 6.

¹⁹*Id.* at p. 7.

²⁰The use of nominee shareholders appears to be quite widespread. Evidence on the significance of overseas nominee companies is scattered but non-residents interested in portfolio investment are counselled to employ the services of a nominee company of an Australian bank. Recently disclosed figures for Australia's biggest company, the Broken Hill Pty. Co. Ltd. (B.H.P.), refer to five Australian bank nominee companies as including “a sizeable component of overseas holdings” and ranking among the top 20 B.H.P. Shareholders: Australian Financial Review, September 23rd, 1973, p. 33.

²¹A policy stressed by Prime Minister Gorton in 1969 in his guidelines policy speech, *supra* note 6 at p. 5.

²²Reserve Bank of Australia, submission to Senate Select Committee on Foreign Ownership and Control (July, 1972), Appendix A.

of 10 per cent. on individual holdings of the voting shares of a bank, the government declared a more rigid policy

"of not allowing local interests considered unsuitable for the task *or overseas interests to acquire a stake* in Australian banking through the acquisition of an interest in existing banks."²³ (My emphasis).

In the "*near-banking*"²⁴ sectors of instalment finance and merchant banking, foreign entry and participation, on the other hand, has been very marked in recent years. The majority of the larger instalment credit companies have substantial overseas shareholdings, in many cases involving foreign banking interests, barred, as we have seen, from engaging in banking operations *per se* in Australia.²⁵ Since 1969, shareholdings in several of the larger finance companies have been taken up by overseas banks, predominantly American. While it is accepted that "substantial lines of credit"²⁶ have been provided by these overseas connections, present experience under the Companies (Foreign Take-Overs) Act 1972 suggests that further incursions will be regarded rather warily and may expect an icy reception. But then relatively few takeover opportunities (in terms of achieving a position of effective control as opposed to consolidation of position) would appear available in any event. Few large Australian-owned firms remain.

In the case of merchant investment banking companies, there is "almost universally a significant component of overseas ownership"²⁸ which continues if one broadens the category to include a wider range of activities in corporate development finance.²⁹ The growth of foreign involvement here has frequently been by way of independent or joint ventures involving several overseas banking interests. Undoubtedly their international experience and access to foreign capital markets have been factors in their rise to comparative prominence since the mid-1960s. Moreover, as one entrant recently argued,

"... it should be understood that overseas institutions have not been permitted to enter the commercial banking field in Australia, with the result that their activities have inevitably been channelled into other businesses, of which consumer finance and merchant banking are by far the most significant examples."³⁰

Conclusion.

Subject to a few isolated measures concerned with national security or other specialized considerations, the formal limits on foreign participation are thus confined to banking, civil aviation and television station licences. However, this short list of "key sectors" has been supplemented in 1973 by the force of decisions under the Companies (Foreign Take-

²³*Id.* at pp. 2-3. There has not been time to determine if the formula will meet the intent. It ought to be further noted that considerable official leverage on changes in ownership has always been afforded by s. 63, Banking Act 1959-67.

²⁴Perhaps not a wholly accurate term but frequently used in financial publications and commentaries. In its widest sense, the Australian usage refers to such financial institutions as instalment credit companies, short term money market companies, pastoral finance and development finance companies, building societies and credit unions. For an overview of foreign ownership in the financial sector, see Reserve Bank Submission *supra* note 22, at pp. 13-16.

²⁵*Id.* Appendix C. See also Submission of Australian Finance Conference in Proceedings, July 11, 1972, Appendices C and D at pp. 212-13.

²⁶Submission of Ord—B.T. Co. Limited (described variously as a merchant banker or a development finance company; 90% owned by Bankers Trust Company of U.S.A.) in Proceedings, Senate Select Committee on Foreign Ownership and Control, July 12, 1972, at pp. 324-5.

²⁷Reserve Bank Submission, *supra* at note 22, Appendix C.

²⁸Ord—B.T. Co. Limited Submission, *supra* note 26, at p. 325.

²⁹*Ibid.*; confirmed by Reserve Bank Submission, *supra* note 22, Appendix E.

³⁰Ord—B.T. Co. Limited Submission, *supra* note 26, at p. 325.

Overs) Act and several announcements of governmental intention. Indeed, the cumulative effect may be said to have gone considerably beyond the list of key sectors formally established in Canada.

On the assumption that Bill C-132 (Foreign Investment Review Act) is enacted, we may well see a similar effect on the list of industries to be protected from further foreign takeovers.

2.7 Two Special Cases of Federal Restrictions on Foreign Participation. In keeping with the pre-1972 policy of reserving the right to prohibit a takeover adverse to "the national interest", the Commonwealth government did move against specific attempts in 1968 and 1970.

The first involved amendment of the Capital Territory's Companies Ordinance³¹ to prevent the takeover of two life insurance companies registered under the Life Insurance Act.³² More recently, in September, 1970, the Ordinance was changed to prevent a takeover, in this case of two companies holding Northern Territory uranium deposits.³³

It will be observed that both steps were taken hurriedly, in an *ad hoc* fashion, and in response to specific takeover threats. Again, in both cases there was no attempt to deal with a sector or area of economic activity beyond that falling within the limits of the federal powers in respect of the Capital or Northern Territories. Nonetheless, the actions were indicative of a growing Commonwealth concern over foreign takeovers. They also illustrated the simple, Ordinance approach available to the Commonwealth in the exercise of its territorial jurisdiction.

Given the introduction of a national policy in the 1972 Companies (Foreign Take-Overs) Act and its consequent "ripple" effect on investment decisions, it is likely that the 1968 and 1970 actions were the last of a kind.

2.8 Selected National Statistics on Foreign Direct Investment in Australia. It may be helpful at this stage to reproduce several tables of data presented in evidence before the Senate Select Committee on Foreign Ownership and Control in 1972. No attempt is made to discuss the adequacy or methodology of the figures reproduced. Indeed, there has been frequent criticism about the lack of timely and accurate statistics of overseas participation in Australian business.³⁴ These caveats notwithstanding, the statistics may yield a helpful perspective on the larger Australian picture of foreign participation. Had time been

³¹Companies (Life Insurance Holding Companies) Ordinance 1968, gazetted on Nov. 19 but announced by the Prime Minister on Sept. 23.

³²The entire exercise is discussed and analysed in Nochimson, *The M.L.C. Ordinance—A New Legal Approach to Foreign Investment*, 43 Aust. Law Jnl. 101 (March 31, 1969). As in the Thomas Transport—Ansett Transport affair, it appears that the takeover was strenuously objected to by the offeree company's board. Prime Minister Gorton denounced the attempts of the apparent foreign buyers to conceal their identity and vowed that local control of investment decisions of over \$700 m. of savings would be retained, *per* Australian Financial Review, Sept. 24, 1968, cited in Nochimson, note 1. As then, foreign controlled companies presently dominate the Australian life insurance industry: see Submission of Insurance Commissioner in Proceedings of Senate Select Committee on Foreign Ownership and Control, July 18, 1972 at p. 432. Whether or how their investment decisions had been against the public interest was not commented upon.

³³The effect of the *Companies (Uranium Mining Companies) Ordinance* 1970 is to place restrictions upon the purchase of shares in certain specified companies (in this case two companies having control over uranium deposits in the Northern Territory). Briefly the Ordinance operates

- (1) to limit to 15% the total number of shares in a specified company that may be held by a non-resident or by a foreign corporation,
- (2) to limit to 5% the number that may be held by one non-resident or foreign corporation, and
- (3) requires disclosure of all holdings representing more than 5% of the issued capital of either company.

³⁴Report No. 1 (Parliamentary Paper No. 216 (1972) at p.1) of the Senate Select Committee on Foreign Ownership and Control recommended, *inter alia*, "that official statistics of overseas participation in the mining and manufacturing industries [be] provided and updated on a regular basis and also extended into other industries." It is understood that steps have been taken in the Department of the Treasury to implement the recommendation.

available, it would have been interesting to compare Australian and Canadian³⁵ figures. Although comparable reporting criteria are sometimes absent, the exercise would certainly yield some similar figures in manufacturing, mining and some financial institutions.

TABLE I
Direct Foreign Investment—Manufacturing

INDUSTRIES SUBJECT TO CONTROL OF LARGE FOREIGN CONTROLLED COMPANIES*

	Assets of Large Companies Under Foreign Control	Domicile of Predominant Companies
	Per Cent	
Motor Vehicles.....	100.0	U.S.A., U.K.
Tobacco and Cigarettes.....	100.0	U.K., U.S.A.
Paint.....	94.0	U.K.
Pharmaceuticals.....	93.0	U.S.A., U.K.
Petroleum and Chemicals.....	88.6	U.K., U.S.A.
Agricultural Equipment.....	83.7	U.S.A.
Transformers, Switchgear, etc.....	71.5	U.K.
Rubber Tyres.....	70.1	U.K., U.S.A.
Electric Wires and Cables.....	67.3	U.K.
Non-ferrous Metals.....	65.5	U.S.A., U.K.
Other Heavy Equipment.....	64.9	U.K.
Excavating Equipment.....	55.0	U.S.A.
Communications Equipment.....	54.0	U.S.A., U.K.
Textiles.....	52.6	U.K.
Radios, TV and Appliances.....	47.2	U.K., Holland and U.S.A.
Cement.....	33.6	U.K.
Food Processing.....	32.4	U.K., U.S.A.
Refrigerators and Washing Machines.....	27.7	U.S.A.
Heavy Engineering.....	20.0	U.K.
Iron and Steel.....	17.3	U.K.
Fertilisers.....	15.9	U.K., U.S.A.

*E. L. Wheelwright, "Development and Dependence: the Australian Problem", *The Australian Quarterly*, Vol. 43, No. 3, September 1971; as reproduced in McCarthy, "The Great Australian Takeover Book" (1973) in Appendix 4 at p. 217.

³⁵For example, as cited in *Foreign Direct Investment in Canada* (the Gray Report) in Ch. 2, pp. 16-22.

TABLE II
Australian Manufacturing Industry

DETAILS OF FOREIGN INVESTMENT AND LEVELS OF PROFIT, CONCENTRATION, GROWTH AND TARIFF PROTECTION*
(Years ended 30th June)

Industry	Foreign Controlled Share of Value of Production, 1967	Profit Before Tax and Interest, 1970		Five Largest Firms Share in 1970		Average Annual Rate of Growth		Effective Tariff Protection Available 1968
		On Funds Employed	On Sales	Sales	Funds Employed	Volume of Production	Gross Investment	
		Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	
Tobacco Products.....	99.0	24.6	9.8	99	99	2.6	6.9	30
Oil and Fuel.....	82.6	9.1	9.9	84	84	9.5	-0.7	3
Soaps and Detergents.....	82.4	22.0	8.4	64	84	5.5	6.2	35
Chemicals and Fertilisers..	78.0	8.7	8.4	51	60	13.5	19.2	36
Pharmaceuticals and Toilet Preparations.....	76.3	24.6	14.4	29	35	6.7	11.2	68
Paints, Polishes and Inks..	61.4	16.1	9.3	68	68	4.8	3.9	62
Motor Vehicles and Parts..	60.9	17.2	8.6	75	77	4.0	20.7	67
Confectionery.....	41.5	13.2	9.1	76	84	10.8	10.0	39
Jewellery, Toys and Other Products.....	32.2	13.2	6.7	15	20	5.9	-6.0	68
Machinery.....	31.3	11.9	7.1	19	20	8.1	7.5	50
Food and Drinks.....	26.1	11.9	5.1	25	25	4.5	9.8	19
Metal Manufacturers.....	25.0	10.9	11.7	59	76	8.0	14.3	80
Tyres and Other Rubber Products.....	23.1	10.5	6.4	93	92	5.5	12.0	33
Yarn and Cloth.....	23.1	10.7	7.7	42	44	5.1	5.3	42
Rope, Canvas and Sacking	18.8	12.5	8.2	83	90	4.8	-0.3	120
Plastic Products.....	18.4	16.9	10.3	48	51	17.5	14.5	55
Cement and Plaster Products.....	16.7	16.9	10.7	61	68	8.1	10.6	28
Footwear.....	16.7	14.3	15.1	33	45	3.0	7.1	68
Wool Scouring and Fellmongering.....	16.7	8.9	3.6	77	64	-0.2	8.6	—
Optical and Scientific Instruments.....	14.7	19.1	8.3	57	64	13.4	11.9	6
Paper, Stationery and Printing.....	13.4	15.3	9.8	25	35	8.1	10.1	37
Glass and Clay Products...	12.5	11.7	10.7	88	89	5.5	10.7	29
Leather Goods and Bags...	9.8	9.2	4.2	30	39	0.5	5.7	63
Ships and Transport Equipment.....	7.8	10.7	4.2	45	49	4.0	4.8	71
Animal and Vegetable Oils..	7.1	10.3	5.5	98	99	4.8	7.8	5
Bricks.....	6.7	15.2	15.3	52	51	4.6	16.3	48
Clothing.....	6.4	16.1	6.2	13	20	4.6	7.5	74
Timber Milling.....	5.4	12.5	6.3	22	20	3.1	4.7	22
Furniture.....	4.6	20.5	7.5	21	31	6.1	5.0	54
Wooden Products.....	1.1	19.6	7.3	22	29	6.3	7.8	30
Brewing, Winemaking and Distilling.....	0	14.0	9.0	72	60	5.4	5.4	16
Total Manufacturing Sector	29.7	13.0	8.4	—	—	6.8	9.3	46

*Tariff Board Report, 1970-71; as reproduced in McCarthy, "The Great Australian Takeover Book" (1973) in Appendix 5 at pp. 218-219.

TABLE III
Overseas Ownership and Control of Australian Mining Industry
1963, 1967 and 1968

Year	Value of production attributable to		Average employment attributable to	
	Overseas ownership(a)	Overseas control	Overseas ownership(a)	Overseas control
	Percentage of total	Percentage of total	Percentage of total	Percentage of total
Metal mining—				
1963	39.8	53.6	31.4	42.5
1967	50.0	64.9	36.1	51.7
1968	51.0	68.7	36.1	51.7
Fuel mining—				
1963	11.5	15.5	8.5	11.4
1967	25.6	32.5	13.5	18.1
1968	32.3	39.7	16.6	21.3
Non-metal (excluding fuel) mining—				
1963	13.8	19.2	6.8	8.9
1967	19.6	28.5	14.9	19.7
1968	20.0	28.6	18.2	21.8
Total mining—				
1963	27.3	36.8	19.7	26.5
1967	40.9	52.9	26.0	36.6
1968	44.0	58.1	27.4	38.1

(a) Excludes ownership resulting from overseas portfolio investment.

Source: Commonwealth Treasury, *Overseas Investment in Australia*, May, 1972.

2.9 *The Senate Select Committee on Foreign Ownership and Control.* On December 10th, 1971, this Committee was established by Resolution of the Senate to inquire into and report upon foreign ownership and control of Australian commerce, industries, land and resources. Its terms of reference³⁶ signalled the probe as the first parliamentary inquiry into the legal, economic and political ramifications of overseas business activity in Australia. The only other official study to this time had been undertaken by the Department of the Treasury in its paper, "Overseas Investment in Australia"³⁷ released a few months later in 1972. The report was limited to economic considerations.

In October, 1972, after a number of open hearings and private sessions, the Committee published a form of interim report. Those recommendations³⁸ most relevant to this study are as follows:

- “(1) The Government give urgent consideration to determining *key strategic or sensitive areas* where foreign investment should be limited or excluded;
- ...
- “(3) A single National Stock Exchange be created by Federal Legislation;

³⁶Reproduced in Appendix I, Report No. 1 (Oct. 1972), Senate Select Committee on Foreign Ownership and Control of Australian Resources (Parliamentary Paper No. 216, 1972).

³⁷Treasury Economic Paper No. 1 (May, 1972), Australian Government Publishing Service.

³⁸The Committee reported shortly before the federal elections which brought about a change in government. Two Labor Party Senators (Cant and Murphy) refused to agree with the other four members on the ground that "measures can be taken to stem and reverse the increasing foreign ownership and control of Australian industries, commerce and resources." In their view, "such measures should be taken without further delay": Committee Report No. 1, *supra* note 36, at p. 12. Senator Murphy is now Attorney-General and when the Committee was reconstituted on April 10, 1973, Senator Cant was elected chairman: C.C.H. Australian Securities Law Reporter, para. 70-037. Due to the pressure of other Senate business, the Committee has not been overly active in recent months. Its first report forecast investigation of the capital market, the use of nominee companies, an empirical survey of takeover activity and a review of financial intermediaries.

- “(4) A national Companies Act be achieved by Federal Legislation;³⁹
- ...
- “(6) The Government give consideration to either expanding the activities of the Australian Industrial Development Corporation and the Australian Resources Development Bank, or establishing other special purpose organizations; and,
- “(7) The Government give urgent consideration to whether the *ownership and control of all financial institutions* should be regarded as a sensitive area and covered by Federal Legislation and/or Reserve Bank supervision; . . . ”⁴⁰

(Own emphasis)

2.10 *Activity at the State Level: The Victoria Parliamentary Committees (Take-over Offers) Act 1972.* To the overseas visitor (admittedly without the benefit of appropriate comparative data), corporate takeover activity in Australia appears to be of epidemic proportions.⁴¹ The volume and variety of action in recent years, involving both domestic and foreign-controlled offerors, has spawned bestsellers,⁴² company law reform,⁴³ a call for a National Companies Act and a realization that a thorough empirical investigation is long overdue.⁴⁴ The pace of takeover activity has been such that during the growth period of 1965 to 1972,

“the number of takeovers resulting in the removal of companies from the Sydney Stock Exchange has doubled from about 25 each year in 1966-69 to over 50 each year in 1969-72.”⁴⁵

It is acknowledged that takeovers, mergers and sellouts result from a multiplicity of reasons and it is beyond this study's terms of reference to probe them in any detail. What is relevant is to record the growing and diverse debate on the subject and the fact that concern has gone beyond the goal of assuring fair and equal treatment of shareholders of the object company.⁴⁶

Prior to the announcement of the new federal approach towards foreign takeovers in September, 1972, a most intriguing measure came into law in the commercially significant State of Victoria, *The Parliamentary Committees (Take-over Offers) Act 1972*.⁴⁷ (See Appendix B.) It remains a unique exercise at the state level and a balance sheet of public interest criteria available for discretionary application in the review of a takeover proposal.

³⁹Considerable constitutional uncertainties surround this proposal, although the federal case has been strengthened by *Strickland v. Rocla Concrete Pipes Limited*, 45 A.L.J.R. 485 (1971). The present government has committed itself to the introduction of an Act and it is expected to receive first reading shortly: Australian Financial Review, Sept. 6, 1973 at p. 15.

⁴⁰Committee Report No. 1, *supra* note 36 at p. 1. The other recommendations concern a review of tax laws, the establishment of a Mortgage Bank and improved statistical services in the Department of the Treasury.

⁴¹The most comprehensive and accessible compilation of takeover data is in McCarthy, *The Great Big Australian Takeover Book* (1973) in Appendix 10, pp. 226-249 for 1960-72, reproduced *infra* in Appendix D.

⁴²*Ibid.*

⁴³e.g. the Takeover Code, noted *supra* note 6.

⁴⁴Senate Committee Report No. 1, *supra* note 36, at p. 9.

⁴⁵McCarthy, *supra* note 41, at p. 1.

⁴⁶e.g. “The Committee considers that any policy regarding takeovers by mergers with or sellouts to foreign firms needs to be based on grounds other than the economic position of the Australian firm. Consideration needs to be given as to whether the desired result can be obtained by other means”, *per* Senate Committee Report No. 1, *supra* note 36, at p. 10.

⁴⁷Victoria Statutes, No. 8286 (1972), adding Part VA to the Parliamentary Committees Act 1968. Introduction of the Bill followed closely upon passage of the *Select Committee (Ansett Transport Industries Act 1972* which, *inter alia*, appointed a Committee to inquire into the plan by Thomas Nationwide Transport Ltd. to take over Ansett. The Ansett Committee was directed to report on the desirability of the planned take-over scheme “having regard to its importance to the economy of the State of Victoria and in particular to the transport services in Victoria” and whether governmental action would be desirable “in the public interest”. Shortly thereafter, T.N.T. withdrew its offer.

While the review mechanism set up by the statute has yet to be called upon, the incumbent members have held several organizational meetings and potential for action ought not to be simply dismissed.⁴⁸

The Act establishes a *Company Take-overs Committee* consisting of seven parliamentarians.⁴⁹ According to the new section 44B,

“[t]he functions of the committee shall be to consider and *report to Parliament* upon any proposal involving a *take-over for shares in a company incorporated in Victoria* to which Part VIB of the Companies Act 1961 applies *that is referred to the committee (for report by the Attorney-General)*” (own emphasis).

The coverage, subject to such exercise of discretion, thus extends to any offer to acquire 15% or more of the voting shares in a public company, other than by way of regular Stock Exchange purchases.⁵⁰ Only takeover proposals for shares are covered. Broadly speaking, time for review by the Committee is to be afforded by Order in Council “freezing” the proposed takeover situation for a period up to twelve months.⁵¹ In making this interim prohibitory Order, the Governor in Council comes in at the third decisional level, viz., after the Attorney-General has referred the takeover proposal and upon request by the Company Take-overs Committee. Obviously, however, the Order is the linchpin in the exercise and it is important to note the grounds upon which the Governor in Council is to determine whether “the takeover scheme involves the general public interest” and hence may be stopped pending review by the Committee. *The declared heads of concern* are that the scheme

- (1) “involves the *transfer of ownership and control* of the company to a person or persons *outside Australia* or
- (2) “would involve the establishment of a substantial degree of monopolization in any particular industry or
- (3) “would tend to substantially affect the *economy of Victoria* or
- (4) “would prejudicially affect the *employees of the company*.” (Own emphasis.)

These discretionary grounds were later discussed in a press statement (see Appendix C) in which the then Attorney-General elaborated upon the principles that would guide any decision to refer a proposed takeover to the Select Committee. It is clear from the statement that his exercise of discretion would virtually guarantee the issuance of a “freeze” order since the relevant grounds for the decision are identical.

Slightly over a year has elapsed since passage of the legislation and the Committee still awaits its first reference.⁵² The possibility of a reference has been materially reduced by several factors, namely

⁴⁸Meeting with the Company Take-Overs Committee, Sept. 19, 1973. There was some consensus that a takeover attempt by a “corporate raider” (asset stripper) would be a likely candidate for a first reference, particularly if there were any prospect of a plant removal or shutdown and/or the offeree's directors recommended rejection of the takeover proposal.

⁴⁹S. 44A(2).

⁵⁰This is a very generalized reading of Part VIB, ss. 180C, 180D, and more detailed reference to these provisions must be made to identify the precise takeover situations regulated by the Takeover Code.

⁵¹S. 44E(2).

⁵²Only one takeover proposal has been the subject of public comment by the Attorney-General—the successful bid by Cadbury Schweppes Australia Ltd. for Tarax Drinks Holdings Ltd. A report was requested from the Registrar of Companies although it was felt that the case “did not fall within the Guidelines” since

- (1) the offeree board recommended acceptance,
- (2) “in the past, the Victoria government has left foreign takeovers to Canberra”, and
- (3) the foreign element “was not strong enough because of the dual ownership of Cadbury Schweppes Australia Ltd.”, per Australian Financial Review, Sept. 5, 1972, p. 1, Nothing further was heard of the Registrar's report. For federal treatment of the case, see *infra*, para. 3. 6.

- (a) any concern over foreign takeovers has given way to federal measures set up to deal with that question;⁵³
- (b) the spectre of monopolization via takeover is to be controlled by the recently proposed federal Trade Practices Act;⁵⁴
- (c) The strong suggestion that a proposal will not be referred if it is “supported by the directors of the offeree corporation and by the majority of the shareholders”,
- (d) the forecast of official approval for a takeover if it “would lead to the injection of new funds, advance technology and better management”,⁵⁵ surely a rather easy threshold to which most offerors will publicly aspire, at least at the outset, and
- (e) by the knowledge that not a single “exceptional case”⁵⁶ has been identified in more than a year of reviewing compliance statements filed with the Registrar of Companies by offeror companies.⁵⁷ These documents are regarded as confidential by the Registrar.⁵⁸

In summary, the Victoria measure is significant for its assertion of an official responsibility to review takeover proposals in the larger public interest. Passage of control in a local company to non-resident interests is declared to be a primary factor in the exercise of a review discretion. The statute did precede any federal legislation in this area.

For these reasons, and notwithstanding the evidence of inactivity, the 1972 Act calls for separate recognition in any chronicle of policy evolution. Nor ought it go unnoticed that the statute is cited by some state legislators as evidence of the state's interests that ought to be formally considered in any foreign takeover reviewed by the federal authorities.⁵⁹

⁵³Attorney-General Press Statement, August 30, 1972 (Appendix C *infra*), second subclause (b).

⁵⁴Given first reading in Senate on Sept. 27, 1973: Australian Financial Review, Sept. 28, 1973, p. 1.

⁵⁵Press Statement, *supra* note 53, subclause (f).

⁵⁶A term pointedly used in the Press Statement.

⁵⁷Under Part VIB of the Companies Act 1961, the offeror must lodge a disclosure statement (known as a Part A statement per the Tenth Schedule) with the Registrar of Companies before the offer is dispatched to the offeree's company shareholders. Upon receipt of the Part A statement, the Registrar has apparently adopted the practice of requesting a statement from the offeror "covering the matters referred to in the press statement . . . " of the Attorney-General: see sample letter dated Aug. 31, 1973 in Appendix C, *infra*.

⁵⁸Letter to author from Registrar of Companies, Aug. 16, 1973.

⁵⁹Cf. Bill C-132, Foreign Investment Review Act, s. 2(2) (e) referring to the influence of “industrial and economic policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the (foreign) acquisition or establishment.” The interest of state governments in the consequences of takeovers is to be distinguished from their open door policy towards new overseas investment. This attitude has been characterized by federal observers as leading to “a situation where all State Governments continually encourage overseas firms to set up operations in their State, all too often in competition with each other”, *per* Report No. 1, Senate Select Committee (1972), *supra*, note 36 at p. 4.

III. THE NEW AUSTRALIAN POLICY:
THE COMPANIES (FOREIGN TAKE-OVERS) ACT 1972

III. The New Australian Policy: The Companies (Foreign Take-overs) Act 1972

3.1 *Setting for the announcement.* On September 26th, 1972, the Prime Minister foreshadowed federal legislation to prevent foreign takeovers of Australian companies considered to be against the national interest.⁶⁰ The announcement of a clear takeover policy had been expected in light of the Treasury's economic paper,⁶¹ interest surrounding the hearings of the Senate Select Committee⁶² and uncertainty in the business community about government attitudes. The calls for clarity mounted appreciably after two U.S. companies, Clorox and ITT Corporation, withdrew their takeover proposals for Kiwi International and Frozen Foods Limited, respectively, amidst generally unfavourable public debate.⁶³

3.2 *Whether a proposed foreign takeover is "contrary to the national interest" — the criteria.* The terms and administration of the legislation later adopted are discussed in detail below. Pending introduction of the legislation,⁶⁴ the policy was to be implemented immediately by the government, in line with the new maxim "that the time has now come to introduce a new approach for the control of foreign takeovers."⁶⁵

The criteria by which a proposed foreign takeover will be assessed,⁶⁶ in terms of complying with the national interest, were spelled out in the September 26th statement. The Act that later emerged is silent on these factors and Treasury officials have confirmed that their interpretation of "national interest" in each case is very much influenced by the original statement.⁶⁷ The salient aspects are as follows:

(1) *Net economic benefits* — this is the primary test summarized in these words:

"Whether, against the background of existing circumstances in the industry concerned, the takeover would lead, either directly or indirectly, to *net economic benefits* in relation to such matters as production, prices, quality and range of products and services, and efficiency and technological change which would be *sufficient to justify the increased degree of foreign control of the particular industry* that would result from the takeover."⁶⁸ (Own emphasis.)

If this test is cleared, then these additional criteria are considered:

(2) *Good corporate conduct* — will the company concerned be likely to

⁶⁰For a concise treatment of the statement, see C.C.H. Australian Corporate Affairs Reporter, para. 13-350. References in this paper to the Ministerial Statement to the House of Representatives are based on the five-page extract reprinted from the Parliamentary Debates for Sept. 26, 1972.

⁶¹*Supra* note 37, tabled in the House of Representatives in May, 1972.

⁶²⁶³"As a result of the great public interest in the inquiry, special arrangements have been made to make copies of the Daily Hansard available to interested persons upon request. The Committee has also adopted the unprecedented practice of incorporating a large number of the submissions it has received . . .", *per* Select Committee's Report No. 1, *supra* note 36, at p. 4.

⁶⁴e.g., Australian Financial Review editorial, p. 2, Aug. 25, 1972.

⁶⁵The Bill was given first and second reading in the House on Oct. 24th, third reading the next day and cleared the Senate in the final minutes before dissolution for the general elections.

⁶⁶It may be mere coincidence that the Official Opposition's (Labor Party) election slogan became "It's Time."

⁶⁷The full range of takeovers is discussed *infra*. They were to include the purchase of shares or other assets yielding effective control of the offeree company. An important extension was to include "the transfer of a significant part of the ownership or rights over a valuable or potentially valuable mineral area . . ." within the definition of a reviewable proposal: Ministerial Statement, *supra* note 60, at p. 4.

⁶⁸Interview, M. Bassett, former Chief Executive Officer, Treasury's Committee on Foreign Takeovers, Aug. 30, 1973. The government in the Sept. 26 statement expressly reserved the right to take "direct action", without reference to any review authority, against any takeover that "would significantly affect the relative balance of Australian-overseas ownership and control of the industry concerned." Such a step has not been taken to the present, a fact assisted no doubt by the effects of experience under the Companies (Foreign Take-overs) Act 1972.

⁶⁹Statement, *supra* note 60, at p. 4.

“follow practices consistent with Australia’s interest in matters such as exports, imports, local processing of materials produced, research and development and industrial relations, including employee protection”?⁶⁹

(3) *Consistent with government programmes* — whether the takeover would have “adverse consequences” in terms of the government’s objectives for defence, environmental protection or regional development.

In applying these criteria, consideration will also be given to:

(4) *The Extent of Australian Participation* in ownership and management remaining after the takeover, and

(5) *The Views of present Shareholders and Directors* — a factor, according to experienced observers, that all but rules out approval for a takeover where the offeree’s directors have not recommended acceptance of the proposal.⁷⁰

3.3 *Terms of the Companies (Foreign Take-overs) Act 1972*

The Act’s outline, as we have noted, was forecast in the September announcement. Introduced for first and second reading on October 25th, the measure literally sped through the House of Representatives and the Senate, receiving Royal Assent on November 2nd, 1972. It is reproduced in Appendix E and is cited hereinafter as the F.T.O. Act.

The legislation came into force formally on November 9th, 1972, although the general review policy had been in effect from September 27th. In fact, in late October, the Commonwealth informed Cadbury Schweppes Australia Limited that its proposed takeover of Tarax Drinks Holdings Limited would be under an investigation of up to three months pursuant to the interim administrative arrangements announced on September 26th. Upon proclamation of the F.T.O. Act, a formal interim order followed on November 20th. It was somewhat reluctantly revoked on December 21st, thereby allowing the takeover to be consummated.⁷¹

Section 2(2) calls for an expiration date of December 31, 1973 since the Act was meant to “ensure that the interim arrangements [would] function both smoothly and effectively” pending introduction of more complete legislation which would provide “amongst other things for the establishment of an independent [review] authority”⁷² promised in the September announcement. Only recently, the Treasurer was reported as stating that the F.T.O. Act would, in fact, be amended to extend its life for probably another year.⁷³ It is not known whether other changes are contemplated beyond the question of extension.

3.3.1 *The rationale of the F.T.O. Act* is to provide a screening mechanism to review, and if necessary, prohibit a takeover of shares of Australian companies which would result in the transfer of “effective control” of foreign interests judged to be “contrary to the national interest.” A summary of the principal provisions⁷⁴ is in order, followed by a

⁶⁹*Ibid.*

⁷⁰In the words of one corporate adviser: “It is virtually impossible for an overseas corporation to make a takeover . . . if the Board of the offeree company does not wish to be taken over” (Interview).

⁷¹Australian Financial Review (hereinafter cited as A.F.R.) p. 1 on Oct. 26, Nov. 22 and Dec. 21. See further comments on the Tarax takeover in para. 3.6 *infra*.

⁷²Per Prime Minister McMahon, on second reading, House of Representatives, Hansard, Oct. 24, 1972, at pp. 3082-3.

⁷³A.F.R., p. 1, Aug. 30, 1973.

⁷⁴The analysis is anything but exhaustive, for reasons of time and design. It was felt more important to sketch the Act’s coverage and zones of principal application in preference to a lengthy definitional exercise. That exercise, in any event, would best await a paper closely comparing the reach of the F.T.O. Act and Canada’s proposed Foreign Investment Review Act (FIRA).

survey of activities under the F.T.O. Act and a synopsis of some significant cases that have come before the Committee on Foreign Takeovers.

3.3.2 Screening of Foreign Takeovers. The key provision of the Act is section 13(2), which provides:

“(a) if the take-over offer . . . were accepted a *substantial number of voting shares* in the company would be owned by foreign persons . . .; and

“(b) the Minister is satisfied that —

(i) foreign persons are not in a position to exercise effective control of the company but, if the take-over offer . . . [is] accepted, foreign persons would, as a result of the acceptance . . ., be *in a position to exercise effective control* of the company; and

(ii) *the exercise of that control would be contrary to the national interest*,

the Minister —

“(c) may make an *order expressed to prohibit the implementation of the take-over offer . . .*”

(Own emphasis.)

Several terms used in section 13(2) must now be defined:

—“*foreign person*” means a person not ordinarily resident in Australia or a “*foreign corporation*” (section 4(1)). A foreign corporation is a company in which an overseas person or corporation or overseas persons or corporations which are associated are entitled to exercise, or control the exercise of control of not less than 15% “of the total number of votes in respect of shares in the corporation”, or

in which overseas persons/corporations can exercise the control of not less than 40% of these votes (section 4(1)(a) and (b)).

—however, a *corporation shall not be taken to be a foreign corporation* “if the Minister is satisfied that, having regard to all the circumstances”, that such person(s) “are not in a position to exercise a significant degree of control over the conduct of the affairs of the corporation.” (Section 4(2)(d).)

—a “*substantial number of voting shares*” in the offeree company is taken to happen if the foreign persons end up in a position to control 15% or more of the voting shares, or 40% if they are not associated foreign persons (section 11).

—“*effective control of the company*” — the foreign persons may hold a substantial number of voting shares in the Australian company (if the takeover were accepted) but may nevertheless be regarded as *not* being in a position to exercise effective control of the company if the Minister “is satisfied that, having regard to all the circumstances, those persons are not in a position to exercise a significant degree of control over the conduct of the affairs of the company” (section 13(5)). Thus, there is no clear line as to what is or is not “*effective control*” as applied to the actual results of a successful takeover proposal.

A foreign corporation holding less than 15% of the voting shares, it would appear, *cannot* be deemed to control the local corporation. Control over 15% or more, however, places the foreign corporation “*in a position to control*” but

does not of itself conclusively presume control. It is also important to appreciate the "direct or indirect" treatment of the control of voting rights in both the foreign corporation and the offeree firm (section 8). The F.T.O. Act focuses on the transfer of control by the acquisition of shares, as widely defined, and does not extend to other techniques including the purchase of assets or licensing agreements.⁷⁵

—“*contrary to the national interest*” — the Act is silent here, and questioners are usually directed to the criteria discussed in the Prime Minister's statement on September 26th and analysed in paragraph 3.2 *supra*. The weight attributed to each factor varies according to the circumstances of the particular case although it is suggested that the present Government's policies have made industrial relations and regional development more influential than might have been the case had the previous Administration remained in office.⁷⁶

It will also be recalled that continued Australian participation in equity and management is to be a factor in the screening process. In this context, the fact that there will continue to be some Australian equity will be discounted unless a formal undertaking is given that the remaining local equity will not be taken over at a later date. If the undertaking is not given,

“the government is placed in a position that if it permits the takeover to proceed it will subsequently have no power to prevent the further acquisition of the remaining shares, as the legislation will be inapplicable.”⁷⁷

The latter conclusion, of course, arises from the argument that the increase of equity by a foreign corporation already in a position of “effective control” is not a reviewable transaction under the F.T.O. Act. The statute is only concerned with the assumption of that degree of control and subsequent purchases of ownership are beyond official regulation.

According to interviews, it is normal practice to include supporting statements from the offeree company's board of directors in respect of the proposal being in accord with the “national interest” criteria. With regard to the question of shareholders' interests, the Committee on Foreign Takeovers pointedly asks the offeree company to “state the attitude of its board of directors to the offer.”⁷⁸

3.3.3 The Committee on Foreign Takeovers is not mentioned in the F.T.O. Act and surprisingly little is known about its membership or its degree of influence in advising the Treasurer on specific decisions arising from its review of takeover proposals. At the present the Committee's members apparently come from the Prime Minister's office and the Departments of Secondary Industry, Trade and Treasury. The Committee is serviced by a secretariat which is part of the Treasury and is currently headed by a senior officer from Treasury.

⁷⁵The Prime Minister's statement on Sept. 26, 1972 envisaged legislation to review purchases of shares, transfers of assets and the acquisition of ownership of rights over a mineral area: Statement, *supra* note 60, at p. 4. Only the first area is included in the F.T.O. Act. But see para. 3.7, *infra* in respect of *de facto* extension of the F.T.O. Act to these other areas. Some insight into Treasury's interpretation of beneficial ownership and control is afforded by Question 4 of “Material Information required in respect of a Foreign Takeover Proposal”, reproduced in Appendix H.

⁷⁶Interview — confidentiality requested.

⁷⁷Undated memorandum prepared by a participant at F.T.O. Act seminar sponsored by Barclays Australia Limited, featuring address by Chief Executive Officer, Committee on Foreign Takeovers (1973) at p. 3. These suggestions may be inferred from Questions 4 and 14 in the questionnaire submitted to offerors by the Committee (see Appendix H).

⁷⁸*Id.* Question 14.

Originally, it was envisaged that takeover proposals would be referred to an independent authority which would include official government representation. This authority was to review each such proposal and report on it to the government for its ultimate decision.⁷⁹ The Committee emerged as an "interim arrangement" in the September 26th policy statement and has remained in operation since that time.

Recently there have been reports that the Committee will be replaced by full-time Treasury officers in the new takeovers branch in the foreign investment division of the Treasury.⁸⁰

3.3.4 *Divestment.* The F.T.O. Act nowhere compels a person to notify the Minister (the Treasurer) of a proposed takeover. However, in section 14, divesting powers are granted to the Minister in relation to accomplished takeovers of a kind that could be prohibited if the Government had learned of them in advance. On a close reading of the power, it will be seen that it is predicated partly on ownership whereas section 13 is based exclusively on conditions of control. Without going into the formula in further detail, it will be seen from section 14(1)(a) and (b) that the Minister may make a divesting order if, *inter alia*, he is satisfied that —

- “ (i) the foreign person concerned is, or the foreign persons concerned are, in a position to exercise effective control of that company; and
- “ (ii) the exercise of that control would be contrary to the national interest.”

To date, there has not been any activity under this power of divestiture.

3.3.5 “*Approval*” certificates. By the terms of section 17, the Minister is given the power to grant two types of certificates, namely,

- (a) to the effect that a particular takeover “would not result in foreign persons being in a position to exercise effective control of the company; or
- (b) “that the exercise of effective control . . . by particular foreign persons would not be contrary to the national interest.”

Apparently one certificate has been granted under this section and this is discussed as the second case at paragraph 3.6 *infra*. As a rule, however, the Department of the Treasury has refused to consider requests for such certificates on the grounds that the Treasurer either lacked the power on the facts or was most reluctant to set a further precedent by granting a certificate. Requests for the certificate normally arise when a takeover is allowed to proceed and the offeror seeks some solid evidence that the government will not rethink its decision at some later time.

3.3.6 *Other Provisions of the F.T.O. Act.* Reference to the complete Act will readily confirm that we have only dealt with the highlights of the enactment. However, it is felt that our present purposes will be satisfactorily served by this limited exercise. More assiduous analysts are invited to consider the treatment of holding companies (see sections 3 and 5, a product of constitutional uncertainties), voting control (section 8), associated persons (section 10), share acquisition situations (section 13(1)) and defences to prosecutions (section 16).

3.4 *The Machinery of Review under the Act.* The normal procedure is for the foreign corporation, with the participation of the offeree company, to contact the Foreign Takeovers Committee with news of the proposed takeover. The practice has developed of an informal, oral communication to obtain some sense of the Committee's informational

⁷⁹Sept. 26, 1972 Statement, *supra* note 60, at p. 4.

⁸⁰A.F.R., p. 1, Aug. 30, 1973.

priorities. The more complete the degree of formal disclosure at the outset, the greater is the likelihood of an earlier ruling and expeditious treatment of the proposed takeover.

Another reason for this approach is suggested by section 13(7) whereby the Minister must either make an interim order to allow for review of the takeover proposal within one month from the time of written notification or if the month expires, he is prohibited from so acting and the takeover may proceed. The Committee therefore will notify the Treasurer upon receipt of the written notification and to the extent that the issues are complex and/or the information supplied is inadequate, the risk of an interim order is much greater. Such delay, needless to say, is unwanted by either party to the takeover.

An example of an interim order is to be found in Appendix F. The purpose of an interim order is to enable "due consideration to be given to the question" whether a final order of prohibition should be made (section 13(6)). The maximum term of an interim order is three months, with power in the Minister to make an order revoking it prior to the expiration of that time (section 13(9)). If a favourable decision (that is, consent to the takeover proposal) is reached some days or weeks in advance of expiration of the order, it is usually revoked by an appropriate notice in the Commonwealth Gazette. If only a few days remain, the parties are normally informed privately and the order lapses without further notice.

A procedure allowing for offerors' undertakings to not proceed in lieu of a published interim order does not exist and no exceptions are allowed. This has been sought on several occasions by parties seeking to preserve secrecy during the course of takeover arrangements. Once the interim order is made, the possibility of a counter proposal by other interests arises and there has been at least one case⁸¹ of a second proposal being made (by an Australian company, not a "foreign corporation" as defined in the F.T.O. Act).

While there is no prescribed procedure for inviting or hearing representations on a takeover proposal that is the subject of an interim order, there is nothing to prevent the communication of views to the Takeovers Committee or the Treasurer. Evidence of their significance or influence in the decisional process is not available but the practice of gazetting interim orders⁸² must have been expected to attract "outsider" views. It is possible that a more formal arrangement for the solicitation of the views of all interested parties will be provided for in any amending legislation.

If a final order of prohibition is made, it must be made before the expiration of the three month interim period. Its terms, for our purposes, are governed by section 13(2) (c) and (d) and an example may be found in Appendix G.

3.5 Statistical Summary of Activity under the Companies (Foreign Take-overs) Act. There is considerable difficulty in compiling accurate figures on official activity under the legislation. This is due to the failure to issue statistics, at regular intervals, which are consistently categorized to allow for a running record of notifications received and interim and final orders made. Data on the number and details of formal notifications are infrequently reported. As noted previously, an interim order may simply expire and no further mention might be made of its fate.

It is not unusual for the offeror party to notify the Committee on Foreign Takeovers of its intentions, with the knowledge (and/or a legal opinion) that the transaction is quite

⁸¹In the bid for control of Kauri Holdings Limited, A. V. Jennings Industries (Australia) Limited made an unsuccessful offer after an interim order had been made. The Treasurer declared a lack of jurisdiction since the combination of a minority shareholding and an unexercised purchase option gave "effective control" already to the foreign corporation. *Quaere?* A.F.R., p. 1, May 24, 1973.

⁸²The primary purpose of publishing the interim order, it is admitted, is to give formal warning to shareholders. This is even more emphasized in newspaper announcements taken out by the Treasury. See Appendix F for an example.

outside the ambit of the legislation. Apparently this course of action is borne of an excess of caution to minimize any official surprise or, worst of all, the possibility of an order of divestiture in the future. It has even been followed in takeover situations involving a purchase of assets to which a divesting order would be inapplicable.⁸³ These factors affect the accuracy of figures that are released.

Subject to these disclaimers, the official activity under the F.T.O. Act since September 27th, 1972 may be summarized as follows:⁸⁴

1. <i>Written notifications</i> of takeover proposals, <i>prima facie</i> within the Act, received between September 27th, 1972 and August 23rd 1973 (last date available)	372
2. <i>Interim orders</i> gazetted, between September 27th, 1972 and September 13th, 1973	56
3. <i>Prohibition orders</i> gazetted, between September 27th, 1972 and September 13th, 1973	11
4. <i>Interim orders in effect</i> as at September 13th, 1973	19

3.6 *Synopsis of a Number of Takeover Cases reviewed under the Companies (Foreign Takeovers) Act.* It might be helpful to refer to a number of the more significant or interesting cases that have been subjected to scrutiny under the F.T.O. Act. This study is arranged in chart form for ease of presentation. Unless otherwise stated, the information was obtained from reports in the financial press (principally the Australian Financial Review), the Commonwealth Gazette and in the course of interviews in August and September, 1973. Every attempt has been made to ensure accuracy, but on occasion, complicated corporate matters invariably suffer in the reporting and sometimes are rather unamenable to columnar summary.

⁸³An exception was the takeover of an Australian-owned advertising agency (Singleton Palmer and Strauss McAllan N.S.W., known as SPASM) by the local subsidiary of the U.S., Doyle Dane Bernbach (D.D.B.) via the purchase of facilities and the taking on of SPASM's staff: A.F.R., p. 38, Sept. 11, 1973. According to a reliable source, the Takeovers Committee was very "upset" by the takeover which avoided the F.T.O. Act, particularly as it involved a "sellout" of the "most uniquely creative agency to have started in Australia". The advertising agency business in Australia is in the forefront of debate about the full costs of foreign control, as in Canada. An indication of official ambiguity concerning the Act's coverage is revealed in the Treasury's Press Release, dated July 9, 1973: "In the case of 21 proposals, the Government found... that it had no objection or that action was not available under the Act."

⁸⁴The assistance of Richard Ackland, A.F.R. correspondent in Canberra, for his data on gazetted orders is gratefully noted.

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
Cadbury-Schweppes Australia Limited (U.K.)	Tarax Drinks Holdings Limited	20th November 1972	Interim order revoked 23rd December, 1972	<p>1. Victoria Attorney-General on September 4th called for report from Registrar of Companies prior to possible reference to Company Takeovers Committee. No reference was ever made.</p> <p>2. Offeror informed federal government of proposal on September 27th. On October 26th, government told offeror of intention to issue interim order. F.T.O. Act came into effect November 9th and order was issued on November 20th.</p> <p>3. Apparently offeror continued to buy shares after October 26th. "Irrevocable" acceptances had been secured from the board (majority shareholders).</p> <p>4. On or about December 23rd, new Labor Treasurer, Mr. Crean, revoked interim order but was critical of continued purchasing by offeror after October 26th — "such tactics would not be tolerated in the future", a threat of s. 14 divesting order in any similar case. Offeror had 98% of shares of December 23rd.</p> <p>3. Spectre of s. 14 <i>divesting order</i> raised.</p> <p>4. Relevance of overwhelming acceptance of offeree's shareholders and board of directors.</p> <p>5. Raised possibility (unfulfilled) of <i>review of foreign takeover at state and federal levels.</i></p>	<p>1. Perhaps the <i>largest takeover</i> by a foreign corporation to be proposed, even allowed, since September 26th, 1972.</p> <p>2. <i>Food industry</i> thought now be a <i>sensitive sector</i> closed to further non-resident takeovers. Decision may be last of its kind.</p>

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
Hill-Saint Group (U.K.)	Australian Equitable Insurance Company Ltd.	N/A	\$17 certificate that takeover not contrary to national interest. Granted on or about January 24th, 1973.	1. British bid followed four abortive takeover discussions with various Australian-owned insurance companies. 2. Offeree had reported loss for most recent year.	1. Foreign takeover allowed in <i>sensitive industry</i> —insurance due to concern for policyholders. Clear example of need for case by case review possible with a screening agency.
Barretts Wood Green (Australia) Pty. Ltd. (wholly owned subsidiary of U.K. corporation).	Barratt Paynes Limited	February 12th 1973.	Allowed	1. Foreign corporation held 25% share since 1955. Offer made to buy out remainder. No evidence of share option pre-dating F.T.O. Act. 2. 150 shareholders in offeree company, \$500,000 takeover price, only 2% of market share in confectioneries. Offeree directors supported takeover.	1. Existing 25% voting control not judged to be "effective control" on all facts. Interim order issued. An increase in existing foreign ownership deemed to come within F.T.O. Act. 2. <i>Threshold of \$1M assets</i> of offeree discussed in September 26th, 1972 statement not in F.T.O. and small takeovers may be screened. Are approved more readily but susceptible to interim order if in <i>sensitive industry</i> such as food—the case here, but allowed after investigation.

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
Pegler-Hattersley Limited (U.K.)	M.B. John & Hattersley Limited	December 6th 1972	March 5th, 1973 Prohibited	<p>1. Bid by foreign corporation to increase present 21% holdings to 61%. Potential for greater export markets cited particularly by offeror.</p> <p>2. Offeree manufacturer of pressure valve equipment. A major employer in smaller city of Ballarat. Known government concern for regional development.</p> <p>3. Interim order was made day after Labor Government took office.</p>	<p>1. Very important decision since resulted in first <i>prohibition</i> order.</p> <p>2. Involved decision of shift from "substantial number of voting shares . . . already owned" (s.13(2)(a)) to "<i>effective control</i> . . . if the takeover were accepted" and "exercise of that control would be contrary to the <i>national interest</i>" (s.13(2)(b)). No challenge of decision.</p> <p>3. There would have been no jurisdiction had Pegler satisfied the Minister that their present 21% holding gave them effective control. However, grounds for decision are never given or made available—here in respect of control issue or why contrary to national interest.</p> <p>4. Prohibition order the first made under F.T.O. Act. No reasons given. Pegler allowed to keep 21% holding. Offeree board had approved offer. Apparently only locally owned manufacturer in that line.</p> <p>5. Offer price around \$2.30 per share. After prohibition order, Pegler apparently sold shares to Australian Industry Development Corporation at \$1.50.</p>

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
			6. S.17 Approval Certificate sought but refused. Prohibition order followed.	4. Firm indicator on tough line if offeree is <i>solitary Australian owned company left in industry. Interests of offeree shareholders not persuasive.</i>	1. <i>Key sector—mining</i> early January statements by Minister for Minerals and Energy calling for prohibition on further foreign equity in Australian mining ventures and strict controls to obtain <i>better export prices</i> . Prohibition order surely expected or thought highly likely. Government fearful of foreign owners' negotiating low export terms.
Mitsui and Company (Australia) Limited (subsidiary of Japanese company)	Buchanan Borehole Collieries Pty. Ltd.	January 19th, 1973	Prohibited April 19th, 1973	1. Proposed sale by holding company for Buchanan of 25% Buchanan equity to foreign corporation. Mitsui was long term buyer of coal from Buchanan mines.	1. <i>Key sector—real estate</i> —confirmed earlier by Treasurer's statement on March 20th, 1973 (see Appendix I). Judged 'contrary to national interest'.

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
International Venture Corporation Ltd. (63% controlled by shareholders in Canada, U.K. and U.S.)	Champion Beef Pty. Ltd.	May 28th 1973	Allowed	<p>1. Venture capital to be supplied by foreign corporation by way of 20% holding. Policy of I.V.C. to avoid taking control of companies in which it buys interest.</p> <p>2. Offeree operates a beef fattening farm. <i>Prima facie</i> sensitive industry with real estate holdings.</p>	<p>1. <i>Apparent venture capital exception</i> provided Treasurer satisfied local owners/management remaining in control; in line with Bill C-132, Foreign Investment Review Act (Canada). <i>Persuasive even in apparent sensitive or key sector: ownership of land.</i></p>
3M Australia Pty. Ltd. (U.S. subsidiary)	Teletronics Pty. Ltd.	May 21st, 1973	Prohibited	<p>1. Offeree a small bio-engineering equipment manufacturer, special expertise in cardiac machines; striving for export markets and board supported 3M offer to get better access to U.S. and E.E.C. markets.</p>	<p>1. <i>High technology, local industry</i>—probably a developing key sector. Will not be surprising if, in future, prime candidates for assistance via equity infusion by Australian Industry Development Corporation.</p>
Pleasurama Ltd. (U.K.)	Safari Holdings Pty. Ltd.	August 21st, 1973	No decision by October 1st, 1973	<p>1. Offeree a shell company. Pleasurama seeking to buy a dormant company as vehicle for business in Australia.</p>	<p>1. No <i>prima facie</i> exception for <i>shell companies</i>. Implications obviously being studied.</p>

Foreign Corporation	Australian Offeree	Interim Order	Final Decision or Order	Details	Comments
Industrial Equity Ltd. (N.Z.)	Industrial Sales and Service Service (Queensland) Ltd.	Not made	Prohibited May 25th, 1973 within 30 days of first notification.	1. Offeror via 2 subsidiaries attempting to take over heavy equipment distributor.	1. <i>Pre-emptory rejection of proposal by "corporate raider". I.E.L. to September 1973, by itself or with associated companies, has withdrawn three offers after interim orders were made, two of them by the previous government. This fourth rebuff was particularly direct since a final order of prohibition was made within the 30-day period. No interim order was deemed necessary to allow for more detailed investigation.</i>

3.7 Concluding Observations on the Companies (Foreign Take-overs) Act 1972 after its First Year of Application.

3.7.1 The "Paper Tiger" Allegation.

To several commentators, the statistical summary in paragraph 3.5 will give assurance to

"... companies with nothing . . . to conceal from public gaze, who have the patience and candour to submit to the prescribed investigation, [that] the Australian takeover restrictions are proving a paper tiger."⁸⁵

Of the approximately 400 written notifications received in the year following adoption of the takeover policy, a total of 51 or about 12% of the proposals have been made the subject of an interim order. The remainder have apparently been allowed to proceed, although some in this group could very well have been withdrawn or not otherwise taken to completion. Unfortunately, figures in this respect are not made public.

Of the 51 takeover attempts frozen by interim orders up to September 14th, 1973, 10 or just under 20% of the total were permanently stopped by way of orders of prohibition. A similar order was made directly in the case of one proposed takeover without the necessity for an interim order, bringing the total number of prohibition orders to 11, which amounts to about 3% of all notifications received since the outset of the screening policy. To this category may be added the 8 proposals withdrawn after interim orders were brought down. This would bring to 19 the total number of takeovers subjected to prolonged scrutiny that did not proceed, or were not allowed to proceed to fruition—a figure amounting to nearly 37% of interim orders or close to 5% of all written notifications in the first year of the policy's operation.

On the basis of these figures, there is a persuasive case for the "paper tiger" allegation. Put another way, one could say that approximately 88% of all takeovers judged to fall within the Act's coverage by the Foreign Takeovers Committee were allowed to proceed within 30 days from the government's first formal knowledge of the proposed acquisition. Only an average of one in twenty takeovers is prohibited by a final order or withdrawn after being subjected to an interim order of investigation. On the surface, therefore, the odds are massively in favour of official acceptance of "effective control" passing to non-residents.

However, it is submitted that the exercise of percentages may yield materially misleading impressions. The reasons for caution are several and may be summarized as follows:

- (1) The deterrent effect on takeovers within the Act;
- (2) The deterrent effect on proposed acquisitions outside the Act;
- (3) The influence on the terms of proposed takeovers sent to the Committee; and
- (4) The *de facto* \$1 million (assets) threshold.

These factors are now discussed in order.

3.7.2 *The deterrent effect on takeovers within the Act.* Without exception, corporate advisers who were interviewed declared that many overseas clients had shelved direct investment plans following the September 26th statement. The actual number of cancelled or aborted intentions is impossible to identify since most arrangements are shrouded in secrecy to the last possible moment and the degree of crystallization of individual proposals would vary according to the particular circumstances. The point is that company managers and counsellors witnessed a sharp drop in interest and action by overseas

⁸⁵Far Eastern Economic Review, p. 51, July 23, 1973. See also A.F.R., p. 1, July 13, 1973.

investors. Part of this undoubtedly has been in response to new restrictions on capital imports, discussed in Chapter IV, *infra*, but it is clear that the *advent of a review system sharply curtailed the takeover ambitions of foreign interests*.

The cooling of interest is explained by the delay, publicity and uncertainty of result perceived by foreign corporations in the operations of the Takeovers Committee. These are imprecise and frequently erroneous complaints⁸⁶ but their cumulative effect has apparently been quite significant. It may well turn out, as experience develops under the F.T.O. Act and a certain predictability of result is grasped, that the strength of these concerns will subside. If this does happen, it will be interesting to see how the political climate and national interest criteria will mix to deal with the flow of foreign takeovers (as defined by the Act), presently running at an approved level of nearly one per day.

The prospect of a more assured and confident band of offerors has been sharply tempered, however, by the case decisions reached under the Act. The eleven orders of prohibition and the implications to be drawn from those takeover proposals presently being studied have carried very strong warnings to the business community. On occasion, the message tied up in a negative decision of the Treasurer has been forecast by Government statements about particular industries to be barred from further foreign direct investment. It is fair to suggest that the following industrial categories now constitute "key sectors" in which fresh takeover activity by non-residents will be considered very, very carefully and inaction under the F.T.O. Act will be the exception rather than the rule:

- real estate and property development;
- financial institutions, including instalment finance, insurance, merchant banking and building societies;
- pharmaceuticals;
- consumer food and food processing;
- natural resources, particularly "the transfer of a significant part of the ownership or rights over a valuable or potentially valuable mineral area, such as can occur through transactions known . . . as 'farm-ins'"⁸⁷;
- advertising agencies;⁸⁸
- transportation;
- new technologies with growth potential;⁸⁹
- any industry whose ownership/control is heavily dominated by foreign interests.

In at least two of these areas—*real estate* and *mineral resources*—the present Government's intentions have been clearly stated in recent months.

On March 20th, 1973, the Treasurer released a statement on the acquisition of *real estate* by overseas interests (reproduced in Appendix I). The Government, it was announced, was

⁸⁶The great majority of proposals are handled within thirty days and are not gazetted. A degree of uncertainty must attach to the outcome of any investigation but it is submitted that the element of surprise is diminishing with each day of decisions under the Act.

⁸⁷Per Prime Minister McMahon, Sept. 26, 1972 Statement, *supra* note 60, at p. 4. This policy was not included in the F.T.O. Act but the decisions thereunder have applied, and extended, its reach. The mineral exports and resource ownership policy of the present Government is discussed later in paragraph 3.7.2.

⁸⁸A conclusion supported by the controversy surrounding the acquisition of assets and staff of the SPASM agency, *supra* note 83.

⁸⁹e.g., the rebuff of 3M's attempt to acquire control of Electronics Pty. Ltd., Prohibition Order gazetted on Aug. 20, 1973.

"concerned primarily with overseas investment in property development, such as the purchase of real estate for subdivision and re-sale for residential purposes or the purchase of city and suburban blocks for offices, shopping and industrial development, and overseas investment in rural properties."

A study of these problem areas was to be undertaken immediately. The possibility of restrictive treatment under the F.T.O. Act and the exchange controls was carefully suggested, prior to the general warning

"that overseas interests should not enter into significant commitments for real estate purchases for the time being."

As of mid-September, 1973, the results of the study had not been released.

In respect of *mineral resources*, the Prime Minister announced his Government's position in an address to the Australian Mining Council. He referred to the dangers posed by a depletable resource base, unfairly bargained export prices and pollution as factors "compel[ling] the involvement of modern government in the mining industry." The final consideration was the dominance of foreign ownership:

"We must ensure the greatest possible measure of Australian ownership and participation in the mining industry. The industry is already 62% foreign owned. *We do not want that figure to go higher.*"⁹⁰ (Own emphasis.)

Several months later, the Minister for Minerals and Energy broadened this policy of containment to one of progressive reduction of foreign ownership "as the opportunities present themselves."⁹¹ It is his hope that future foreign investment in mineral developments will be funnelled through the Australian Industry Development Corporation in return for a fixed interest yield plus other 'sweeteners' including guaranteed long term supply contracts of the particular minerals which the foreign companies had helped to finance. "Equity in the project would at all times be retained exclusively in Australian hands",⁹² according to the Minister.

One month later, his colleague, the Minister for Overseas Trade and Secondary Industry, was reported as welcoming Japanese equity participation in Australian mining projects in partnership with the A.I.D.C.⁹³ The statement clearly is at odds with the earlier view and all one may conclude is that the present policy is one of containment with new development to involve, at a minimum, a partnership between Australian and overseas interests.

The stand against foreign takeovers has been followed in decisions under the F.T.O. Act. Four of the eleven orders of prohibition have been in the mineral resource area.⁹⁴

It is widely appreciated that all takeover proposals in this industry are routed first to the Department of Minerals and Energy for its comments which are invariably decisive of the matter. "Farm-ins" in favour of foreign corporations or persons simply are not yet cleared or approved. Even joint ventures between foreign interests and Australian parties are referred by the Reserve Bank to the Takeover Committee for review prior to authorizing capital imports by the foreign partner. New investments of this kind, *prima facie*, are outside the terms of the F.T.O. Act but the practice nonetheless is very firmly followed.⁹⁵

⁹⁰Prime Minister Whitlam's address to annual dinner of Australian Mining Industry Council, Canberra, March 19, 1973, "Minerals and the Future", at p. 2.

⁹¹Speech by Minister for Minerals and Energy, Mr. Connor, to N.S.W. Division, Securities Institute of Australia, Sydney, Aug. 10, 1973, at p. 5.

⁹²*Id.* at pp. 6-7.

⁹³The *Australian*, p. 12, Sept. 14, 1973 reporting on address to Australian Chamber of Commerce, Tokyo.

⁹⁴See Orders gazetted on Apr. 19, Apr. 26(2) and May 16, 1973.

⁹⁵Confirmed in the course of several interviews — confidentially requested.

The emergence of a lengthy list of "key sectors" or "sensitive industries" has come about by a combination of F.T.O. Act decisions and Ministerial statements. It is undoubtedly the principal feature of the official Australian policy after a year of implementation. Its presence is acknowledged by business interests even if F.T.O. cases appear to deviate from it on isolated occasions—and even though its exact contents may never be precisely pinpointed at any given time. Its influence in deterring takeover bids for firms in the "tender zones" (particularly if their assets exceed \$1 M) was made clear in a number of interviews.

3.7.3 The deterrent effect on takeovers outside the Act. It will be recalled that the September 26th announcement foreshadowed review of foreign takeovers involving shares "or other assets which might reasonably be expected to result in control of an Australian business passing to overseas interests." (Own emphasis.) The F.T.O. Act however is confined to share transactions, and on occasion,⁹⁶ the acquisition of assets is employed to avoid the terms of the Act.

Yet this device is apparently employed only occasionally, according to the interviews conducted for this study. Most corporate solicitors are quick to point out that both the previous and the present governments have stated their intention to close the gap in new legislation to replace what was never more than an interim measure.⁹⁷ These suggestions and the possibility of retrospective action (particularly if prodded by some "key sector" acquisition using the loophole) are sufficient for most clients to apply the F.T.O. Act as if it dealt with assumptions of control in the broadest sense.

The techniques by which such purchases may successfully skirt the F.T.O. Act are discussed in paragraph 3.7.6. below. For the present, it need only be emphasized that instances of this kind would appear to be far more infrequent than might be supposed. The Act clearly enjoys an expansive interpretation largely attributable to its interim character.

3.7.4 The influence on the terms of proposed takeovers sent to the Committee. The departmental machinery has now been in operation for a year. Seminars are conducted with businessmen and solicitors to acquaint them with the workings of the Act. Informal communications are favoured at the outset of any contact with the Committee and a fairly detailed questionnaire (see Appendix H) is directed to the offeror as soon as possible (preferably before the written notification of a takeover proposal).

Together, these steps maximize the chance of a fully documented case going to the Committee on the date of written notification.

It is not surprising, therefore, that investigations of the majority of cases is completed by the Committee within thirty days of their submission. The requisite documentation has been carefully prepared and it is only to be supposed that prior communications have reduced the areas of possible friction. It is common for the offeree company to join in the process and thereby lend weight to answering those questions bearing on the treatment of the Australian shareholders and employees.

All in all, these factors go to favour a prompt and frequently affirmative review of the takeover proposal, subject to our remarks in respect of key sector industries.

3.7.5 The de facto \$1 Million (assets) threshold. Although statistics on the purchase terms and dollar volume of takeovers reviewed by the committee are not available, it is generally agreed that the great majority involve comparatively small companies.

⁹⁶e.g. the SPASM takeover, *supra* note 83.

⁹⁷Liberal Party *per* the then Prime Minister, Parliamentary Debates, Oct. 24, 1972 at p. 3081 and Labor Party *per* the Treasurer, Mr. Crean, A.F.R., p. 1, May 24, 1973.

⁹⁸Per Prime Minister McMahon on second reading, Parl. Deb. 3081, Oct. 24, 1972.

The attitude of the previous Government was to avoid applying the legislation, "except in special circumstances", to takeovers of companies unless their assets exceeded \$1 million.⁹⁸ That approach has been basically followed by the present Government and most takeover proposals in this category are dealt with summarily. The exceptions, as expected, fall into the so-called "key sector" list, and also in industries with limited asset backing (for example, merchant banks) and in takeovers in which the offer price is much in excess of the assets, valued below \$1 million.⁹⁹

The announcements of action taken under the F.T.O. Act confirm the general attitude towards smaller takeovers. Thus, the Press Release discussing activities from December 5th, 1972 to February 16th, 1973 noted that

"a number of proposals . . . related to takeovers of companies with assets of less than \$1 million and did not raise any important national interest considerations."¹⁰⁰

The obvious result of the "small company exception" is that its incidence swells the ranks of takeover proposals allowed to proceed under the F.T.O. Act. It is further reason to treat the "paper tiger" allegations with some caution.

3.7.6 Circumvention of F.T.O. Act by Foreign Interests. Mention has been made several times of the broad interpretation given the reach of the Act by most corporate managers and advisers. For a variety of reasons, it may be said that this interim measure has enjoyed a pervasiveness originally intended for its long-awaited successor. A certain air of mystery, aggravated by initial secrecy and a failure to publish reasons, surrounds the exercise and undoubtedly has pushed the Act's perimeters outwards.

It is possible, however, to avoid the Act's application in one of several ways:

- (1) *Purchase of assets and/or employment of staff of the Australian business* (provided the assets are not mineral rights; are not related in any way to federal Crown privileges, licences or rights; or that capital imports requiring Reserve Bank approval are not necessary).
- (2) *Licensing, management and franchising agreements* not involving equity participation covered by the F.T.O. Act.
- (3) *Purchase of voting shares below the 15%/40% floor levels in the F.T.O. Act*, giving effective control in the circumstances of the particular case.
- (4) *Foreign-held option on controlling shares*—it has been suggested that such an arrangement is not caught by section 8 but lack of time has prevented a proper consideration of the point. The effect of the exercise would be to place the non-resident in a position of *de facto* control due to the potential for assuming control. Quaere the effect of exercising the option in inviting coverage by the Act?
- (5) *Directors as agents of effective control*—here the articles of association allow for the removal of any director only upon the unanimous vote of the shareholders at a general meeting. The foreign corporation holds a single share. The approach was suggested as a possible device of avoidance.

Quite distinct from such attempts to acquire a controlling interest in an Australian business, the foreign investor is quite free to establish a new and separate company, or to enter into a joint venture arrangement with a local or other foreign partner. Subject to

⁹⁸Per memorandum, *supra* note 77 at pp. 3-4.

¹⁰⁰Commonwealth Treasury Press Release No. 10, Feb. 23, 1973.

certain sensitivities in real estate and mineral resources, the takeover policy has not yet extended to these very separate manoeuvres. However, *exchange controls* are very relevant in such investment attempts. They may also be a significant question to be considered by the offeror in the purchase of shares or assets of local companies if it is necessary to bring in funds from overseas to finance the takeover. The relationship between exchange controls and the F.T.O. Act is a vital part of the total Australian strategy.

IV. THE RELEVANCE OF EXCHANGE CONTROLS IN AUSTRALIA

IV. The relevance of Exchange Controls in Australia.

4.1 The original intent. Foreign exchange controls were first introduced in 1939 as emergency wartime measures covering the proceeds of exports, transactions in securities and Australian accounts of overseas residents. After 1945, the tendency was to restrict these measures and since 1959 to prevent unauthorized transfers of capital by Australian residents. The controls have also been used to prevent export of repatriated capital.¹⁰¹

4.2 Borrowing guidelines for overseas interests, 1965–1972. This era of funding controls was discussed *supra* in paragraphs 2.4 and 2.5. Its principal intent was to restrict the usage of Australian savings by foreign-controlled enterprises in order to improve the country's balance of payments, to render more capital available for local companies and to encourage Australian equity participation in the overseas firms. By 1972, a variety of criticisms was being voiced about the operations of the guidelines, including:

- (1) “the severe lack of quantitative information relating to the composition of capital inflow . . . ”;
- (2) “the complete lack of information relating to the purposes for which capital comes into Australia”;
- (3) circumvention of exchange controls by the operation of the Sterling Area Exemption;
- (4) the buildup in retained earnings in Australia;
- (5) increased overseas borrowings by Australian companies subject to loan conditions yielding “a very large degree of control of Australian enterprises to the overseas lenders”.¹⁰²

4.3 The revised policy announced on September 26th, 1972. The guidelines policy was abolished on this date in the same statement of the Prime Minister announcing a new policy towards foreign takeovers.¹⁰³ The significant changes were:

- (1) *Embargo on overseas borrowings*—all Australian residents including foreign companies resident in Australia were refused exchange control approval for all overseas borrowings which would be repayable, or carry options to repay, in two years or less;
- (2) *Revocation of Sterling Area Exemption*—The result was to treat the transactions between residents of the Australian currency area and overseas Sterling area residents as identical to those with all other non-residents;
- (3) *Abolition of Borrowing Guidelines*, dating back to May, 1965 in respect of local borrowing by overseas-owned companies.¹⁰⁴

¹⁰¹Staff background paper, Senate Select Committee on Foreign Ownership and Control (1973) at p. 1.

¹⁰²Report No. 1, Senate Select Committee on Foreign Ownership and Control, Parliamentary Paper No. 216 (Oct. 1972) at pp. 5-7.

¹⁰³Prime Ministerial statement, *supra* note 60, at pp. 1-3. Its abolition was “welcomed” by the Senate Select Committee, *supra* note 102, at p. 7.

¹⁰⁴These features are treated summarily here. Sources include staff background paper, *supra* note 101, Prime Ministerial statement, *supra* note 60, and Reserve Bank of Australia submission to Senate Select Committee on Foreign Ownership and Control (July 1972), pp. 7-13. No attempt has been made, in the time available, to link the relationship of exchange controls to capital inflow and outflow figures; for assistance, see Reserve Bank submission at p. 8 and Reserve Bank Statistical Bulletins for Feb. 1973 (pp. 233-234) and June 1973 (p. 388).

4.4 *Additional restrictions on overseas borrowings since December, 1972.* On December 23rd, the Prime Minister announced that the existing embargo on overseas borrowings repayable, or carrying options to repay, within two years would be retained and its coverage extended.¹⁰⁵ This measure was to be supplemented by a *variable deposit requirement scheme* in respect of borrowings (with a maturity in excess of two years) of foreign or Australian currency from overseas lenders. Under this plan, borrowers are obliged to lodge with the Reserve Bank, as drawings take place under approved borrowings, *an interest free non-assignable deposit in Australian currency representing 25% of the amount so drawn*. The result has been a very sharp drop in approvals for inward capital movements¹⁰⁶ and the shelving of many investment decisions.¹⁰⁷

Slightly over a month later, the Treasurer announced measures to broaden further the coverage of restrictions on overseas borrowings. These controls are calculated to incorporate indirect forms of borrowings and transactions having similar effects on capital inflow as formal contracts to borrow.¹⁰⁸

4.5 *The operation of Exchange Controls on overseas investment in Australia.* The operational effect of these new restrictions may now be sketched.¹⁰⁹ As pointed out above, Australian residents including branches and subsidiaries of overseas interests require Reserve Bank *authorization to borrow foreign or Australian currency from overseas lenders*. Exchange control approval will not be given to any borrowing which would be repayable or carry options to repay in two years or less.

For borrowings in excess of two years, an *interest-free, non-assignable deposit in Australian currency* representing at present 25% of amounts drawn must be lodged with the Reserve Bank as drawings take place. Increases in indebtedness through *inter-company accounts* which could have the effect of circumventing controls on overseas borrowings are prohibited and surveillance is maintained to prevent such activity.

If overseas residents wish to *acquire shares or assets* in Australia, Exchange Control policy requires that the full purchase consideration be provided at the time of acquisition by the remittance to Australia of foreign currency or its equivalent. Authority, in this area, is required for Australian residents to register shares in the name of a non-resident and to enter into a related contract or agreement with a non-resident.

The acquisition of ownership/control may be effected indirectly

"through, say, the Australian subsidiary of an overseas organization in which case the subsidiary may need to borrow foreign currency from the overseas parent or increase its paid up capital to finance the acquisition. In either case, the proposal is carefully examined to establish, among other things, that a reasonable price is to be paid for the asset and the full purchase consideration is to be provided at the time of acquisition."¹¹⁰

If a foreign takeover comes within the F.T.O. Act,

¹⁰⁸Discussed in greater detail in Reserve Bank Statistical Bulletin, Dec. 1972, at p. 165.

¹⁰⁹Reserve Bank Statistical Bulletin, June 1973 at p. 388.

¹⁰⁷e.g. plans for a \$400 million aluminium refinery at Weipa, Queensland *per The Age*, Aug. 7, 1973 at p. 14.

¹⁰⁸Commonwealth Treasury Press Release No. 3, Feb. 1, 1973.

¹⁰⁹A very useful and comprehensive source has been a position paper, dated May 2, 1973, "Exchange Control in Australia", prepared by B. G. Lyall of the Melbourne office, Reserve Bank of Australia, particularly at pp. 5-8. The complex range of controls are only summarized here. The civil validity of transactions affected by the Banking (Foreign Exchange) Regulations is discussed in Horton, *Australian Exchange Control — Its Civil Consequences*, 47 Aust. Law Jnl. 124 (1973).

¹¹⁰Lyall paper, *supra* note 109, at p. 8.

“clearance of proposals by the [F.T.O.] Committee is a prerequisite to the granting of any related Exchange Control approvals.”¹¹¹

In the opinion of several interviewees, the Reserve Bank’s definition of “foreign takeover” considerably exceeds the scope set forth in the F.T.O. Act. The effect of this “approval tier” in strengthening the screening powers of the F.T.O. Act cannot be underestimated.

¹¹¹*Ibid.* The Reserve Bank’s policy was neatly summarized in its submission to the Senate Select Committee, *supra* note 104, at p. 25, as follows: “Takeovers of significance that come to the notice of the Exchange Control Department of the Bank are referred to Treasury.”

**V. OTHER RECENT EVENTS OF SIGNIFICANCE TO
FOREIGN DIRECT-INVESTORS IN AUSTRALIA**

V. Other Recent Events of Significance to Foreign Direct Investors in Australia.

5.1 *A change of government.* On December 5th, 1972, after 23 years out of office, the Labor Party gained sufficient seats in the federal election to become the Government. Since the change of government, a variety of policy announcements have been made, several inquiries have been launched and significant Bills have been presented for Parliamentary consideration. In a very brief and cursory fashion these developments are noted in this chapter. In most cases, the changes are at a formative or introductory stage. In all cases, it is simply too early to gauge the results with any certainty and a watching brief ought to be maintained.

5.2 *A new Australian Industry Development Corporation*—previously, the A.I.D.C. was concerned with assisting Australian-controlled companies with growth capital. Its source of funds was limited to overseas borrowings. Its purpose in the future is to be “the main means for Australian ownership of Australian economic activity” with access to a new National Investment Fund subscribed to by individual Australians and institutional lenders. It is to be authorized to act on its own initiative in taking equity positions although the government will be able to direct A.I.D.C. participation “in the national interest”.¹¹²

5.3 *Tariff Board Study of Auto Industry*—in August, 1973, a wide ranging report by the Tariff Board was commissioned by the Government. A complex questionnaire has been sent out to auto manufacturers asking, *inter alia*, for answers on the following points:

- product rationalization
- increasing local equity participation
- policies on local content, joint ventures, export incentives, labour relations, auto safety and anti-pollution standards
- Australian research and design activities.

In a preamble to this latest inquiry, the Board pointed out that the Government

“desires to improve the efficiency with which the community’s productive resources are used and to recognize the interests of consumers.”¹¹³

5.4 *A new Trade Practices Act*—on September 27th, 1973, the Trade Practices Bill 1973 was introduced and given second reading in the Senate. Clause 90 sets out steps designed to avoid any conflict between the Bill and the operations of the F.T.O. Act. Clauses 88 to 91 inclusive are reproduced in Appendix J.

5.5 *Energy Resource Policy*—legislation has been introduced to establish a national pipeline authority “to assist in maximizing Australian ownership and control, use and development of gas.”¹¹⁴ There are also plans to establish a Petroleum and Minerals Authority “which will have powers and responsibilities in respect of exploration and development.”¹¹⁵ These steps are in addition to the ownership and control implications engendered by F.T.O. Act operations and the Reserve Bank’s system for approval of capital transactions.

¹¹²For commentary, see A.F.R., Aug. 16, Sept. 17 and 18.

¹¹³A.F.R., p. 6, Sept. 25, 1973; see also p. 5, Aug. 30, 1973.

¹¹⁴Address by Prime Minister Whitlam to American-Australian Association, New York, Aug. 2, 1973, at p. 6.

¹¹⁵*Ibid.*

APPENDICES

APPENDIX A

List of Interviews

The Australian Regulation of Foreign Direct Investment: Relevant Recent Experience for Canada

List of Interviews

A. Melbourne—August 14th and 16th, 1973

1. John Salter,
Manager, Economics Department,
Reserve Bank of Australia,
60 Collins Street.
2. Bruce G. Lyall,
Manager, Exchange Controls Department,
Reserve Bank of Australia,
60 Collins Street.
3. Gordon Stuckey and
Laurence G. Cox, Partners,
Ian Potter & Company, Stockbrokers,
325 Collins Street.
4. Frank H. Callaway and
Thomas E. Bostock,
Mallesons, Solicitors and Notaries,
121 William Street.
5. Brian Benjamin and
Graeme Samuel,
Phillips, Fox and Masel,
Solicitors and Notaries,
44 Market Street.
6. Philip Cooper,
Manager,
Mergers and Acquisitions,
Australian United Corporation Ltd.,
411 Collins Street.

Other Contacts

7. John Finemore,
Chief Parliamentary Counsel,
State of Victoria,
221 Collins Street.
8. Brian J. Waldron,
Registrar of Companies,
Department of the Attorney-General.
451 Latrobe Street.
9. Kevin F. Osmond,
Canadian Consul-General,
151 Flinders Street.
10. Professor Robert Baxt,
Faculty of Law,
Monash University,
Clayton.

B. Canberra—August 30th and 31st, 1973

11. Senate Select Committee on Foreign
Ownership and Control,
Room L 11, Parliament House
(C.G. Edwards, Secretary).
12. The Honourable Frank Crean,
Treasurer,
Commonwealth of Australia,
Parliament House.
13. M. Bassett,
Commissioner of Insurance,
formerly Chief Executive Officer,
Foreign Takeovers Committee,
Department of the Treasury,
Public Service Board, Block 1,
Broughton Street.
14. Robert Ackland,
Correspondent,
Australian Financial Review,
Press Gallery,
Parliament House.

C. Sydney—September 4th and 5th, 1973

15. Professor E. Wheelwright,
Department of Economics,
University of Sydney.
16. Howard Schreiber,
Stephen, Jacques and Stephen,
Solicitors and Notaries,
A.M.P. Building,
Circular Quay.
17. David Block,
Financial Adviser,
9th Floor, 19-31 Pitt Street.
18. Robert C. Nicholls,
Freehill, Hollingdale and Page,
Solicitors and Notaries,
60 Martin Place.
19. J. Turnbull,
Darling & Company,
Merchant Bankers,
Bent Street.
20. Shann Turnbull,
Financial Adviser,
4th Floor, 291 George Street.

D. Adelaide—September 14th, 1973

21. The Honourable L. J. King,
Attorney-General,
State of South Australia.

APPENDIX B

Victorian Parliamentary Committees (Take-over Offers) Act 1972

An Act to make Provision with respect to the Establishment and Functions of a Joint Standing Committee of the Legislative Council and Legislative Council and Legislative Assembly with respect to Take-overs of Companies incorporated in Victoria, to amend the *Parliamentary Committees Act* 1968 and for other purposes.

[13th May, 1972.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. (1) This Act may be cited as the *Parliamentary Committees (Take-over Offers) Act 1972*. Short title.

(2) In this Act the *Parliamentary Committees Act 1968* is called the Principal Act
No. 7727.

2. After Part V. of the Principal Act there shall be inserted the following New Part V.

“PART VA.—COMPANY TAKE-OVERS COMMITTEE.

44A. (1) There shall be a Joint Committee of the Council and the Assembly to be called the Company Take-overs Committee. Company
Take-over
Committee

(2) The Committee shall consist of seven members.

(3) Not less than two of such members shall be Members of and be appointed by the Council and not less than three of such members shall be Members of and be appointed by the Assembly.

(4) The first committee shall be the committee appointed by the Council and the Assembly contingently on the commencement of the *Parliamentary Committees (Take-over Offers) Act 1972* to be the Company Take-overs Committee and that committee shall hold office until the end of the session of the Parliament next after the commencement of the said Act and thereafter the committee shall be appointed as soon as practicable after the commencement of every session of Parliament and the members of the committee shall be appointed according to the practice of Parliament with reference to the appointment of Members to serve on Joint Select Committees of the Council and the Assembly.

(5) Four members of the committee shall form a quorum save when the committee meets for the consideration of its report or for the purpose of voting upon any request to the Governor in Council when the quorum shall be five.

(6) The committee may elect one of the members thereof to be chairman and the chairman shall have a vote, but not a casting vote.

44B. The functions of the committee shall be to consider and report to Parliament upon any proposal involving a take-over for shares in a company incorporated in Victoria to which Part VI B. of the *Companies Act* 1961 applies that is referred to the committee for report by the Attorney-General.

44C. (1) The committee shall hold office as such, and may exercise all the powers conferred upon it by this Act or otherwise for the session during which it is appointed and thence until—

- (a) the day before the commencement of a new session of Parliament; or
- (b) the expiry of the Assembly by effluxion of time; or
- (c) the dissolution of either House of Parliament—whichever of such events first happens.

(2) The committee may sit and transact business during any adjournment or recess in the period of which it holds office, but the committee shall not sit during the sittings of either House of Parliament except by leave of such House.

(3) The committee may sit at such times and in such places in Victoria or elsewhere convenient for the proper and speedy despatch of business.

(4) The committee shall have power to send for persons, papers, and records.

(5) The committee shall have power to hear counsel on behalf of any person who has a particular interest in the subject-matter of an investigation and may avail itself to such extent as it thinks fit of the assistance of specially qualified persons.

(6) Where any matter is being inquired into or considered by the committee and the committee has lapsed or ceased to have legal existence before the matter has been reported on by the committee, the evidence taken before the committee shall nevertheless be considered by any subsequent committee which may inquire into or consider the same matter as if the evidence had been given before and for the information and guidance of the subsequent committee.

44D. (1) Each member of the committee shall be entitled to receive by way of reimbursement of his expenses—

- (a) in relation to his attendance in the discharge of his duties as a member of the committee an attendance fee at the rate of \$10.00 for each attendance at a meeting of the committee at which a quorum is present; but no member of the committee shall be entitled to receive more than one attendance fee in respect of any one day notwithstanding that he may attend more than one meeting on that day; and
- (b) in relation to travelling whenever such travelling has been necessarily done in the discharge of his duties as a member of the committee—
 - (i) such further allowance as is prescribed by regulation; and
 - (ii) any charges for any conveyance paid by him when so travelling.

(2) The total amount payable for attendance fees of members of the Company Take-overs Committee shall not in any financial year exceed the amount of \$7,500.

44E. (1) Where the committee is of the opinion that take-over offers have been or will be made in relation to a company in respect of which it has been required to make an investigation and report, it may request the Governor in Council to declare that the company is a company to which this Part applies.

(2) Where the Governor in Council after considering a request from the committee is satisfied that pursuant to a take-over scheme take-over offers have been or will be made in respect of a company that is being investigated by the committee and that the take-over scheme involves the general public interest because the scheme involves the transfer of ownership or control of the company to a person or persons outside Australia or would involve the establishment of a substantial degree of monopolization in any particular industry or would tend to substantially affect the economy of Victoria or would prejudicially affect the employees of the company he may by Order in Council published in the *Government Gazette* declare the company to be a company to which this Part applies and any such Order shall have effect for such period not exceeding twelve months as the Governor in Council specifies in the Order.

44F. (1) Where a person is a substantial shareholder within the meaning of Division 3A of Part IV. of the *Companies Act* 1961 in a company to which this Part applies neither that person nor any other person shall without the prior consent of the Minister exercise or authorize or permit the exercise of any right to vote or purport to exercise or authorize or permit the exercise of any such right in respect of any share in which the substantial shareholder has an interest for the purposes of the said Division 3A.

(2) The consent of the Minister under sub-section (1) shall be given in writing and may be made subject to such terms conditions limitations and restrictions as he thinks fit and any such consent may be varied or revoked by writing under the hand of the Minister served upon the person to whom the consent has been given.

(3) Where a person exercises or purports to exercise a right to vote or authorizes or permits or purports to authorize or permit the exercise of a right to vote in contravention of sub-section (1) he shall be guilty of an offence against this Act and shall be liable to a penalty of \$5,000 or imprisonment for three months or to both such penalty and imprisonment.

(4) Where a person exercises or purports to exercise a right to vote in contravention of sub-section (1) the vote shall be disregarded and the court may on the application of the Minister make one or more of the orders referred to in sub-section (1) of section 69N of the *Companies Act* 1961 and all the provisions of the said section 69N shall apply to and in relation to any such order.

(5) This section shall be read and construed as one with the *Companies Act* 1961 and shall operate and have effect in all respects as if it had been enacted as a section of Division 3A of Part IV. of the *Companies Act* 1961 and the provisions of that Division shall apply accordingly.

44G. (1) A person shall not make a take-over offer to which Part VIb. of the *Companies Act* 1961 applies in respect of any share in a company to which this Part applies.

(2) Where a take-over offer is made in contravention of this section, the company may refuse to register any transfer of shares which in the opinion of the directors of the company relates to any offer made in contravention of this section.

(3) Section 180y and 185 of the *Companies Act* 1961 shall not apply to or in relation to a shareholder in the company in his capacity as such a shareholder.

(4) This section shall be read and construed as one with the *Companies Act* 1961 and shall operate and have effect in all respects as if it had been enacted as a section in Part VIb. of the *Companies Act* 1961 and the provisions of that Part shall apply accordingly.

3. The Principal Act is hereby amended as follows:—

(a) In sub-section (3) of section 1 after the expression “Part V.—Subordinate Legislation Committee Ss. 41-44” there shall be inserted the expression “Part VA.—Company Take-overs Committee Ss. 44A-44G.”; and

(b) In the interpretation of “Parliamentary Committee” in sub-section (1) of section 3 after the words “Subordinate Legislation Committee” there shall be inserted the words “the Company Take-overs Committee”.

Consequential
amendment of
No. 7727.

APPENDIX C

Registrar of Companies Request for Information and Discretionary Criteria of Attorney-General under Victoria Act

Address all Correspondence to the Registrar
and quote
For verbal enquiries ask for
Mr.
Telephone:

COMPANIES OFFICE

451 LA TROBE STREET
MELBOURNE, VIC. 3000

Office Hours: 9.30 a.m.-12.45 p.m.
1.45 p.m.-3.00 p.m.

August, 1973.

Dear Sir,

Parliamentary Take-overs Committee.

I enclose herewith a copy of a press statement setting out the principles upon which the Minister proposes to exercise his discretion under the Parliamentary Committees (Take-over Offers) Act 1972.

You will note that I have been instructed by the Honourable the Attorney-General to bring to his notice any take-over proposals with respect to a Victorian company which involves the matters enumerated in the press statement. I would be pleased to receive from your Board of Directors a statement covering the matters referred to in the press statement and any other comments your Board may wish to make with respect to the take-over offer for shares in V.S. Supplies Limited.

I would be grateful if you would forward me the statement at your earliest convenience.

Yours faithfully,

Registrar of Companies.

Press Statement

"The Attorney-General (Sir George Reid) said today that Cabinet had approved the principles upon which he proposed to exercise his discretion in relation to the reference of proposed take-overs to the Select Committee of the Victorian Parliament known as the Parliamentary Take-overs Committee.

Sir George said that he did not propose to refer any take-over to the Committee unless it involved either:—

- (a) the Victorian company becoming subject to foreign control or to the ownership of more than 51% of its share capital by foreigners; or
- (b) a substantial degree of monopolisation within a particular industry; or
- (c) a substantial effect on the economy of Victoria or a particular part of Victoria; or
- (d) prejudicial and unfair effect on the existing employees of the offeree company.

Sir George said that he had instructed the Registrar of Companies to bring to his notice any take-over proposal which involved any of those matters. This did not mean that a reference would be made unless there were exceptional circumstances involved. He said that he had asked the Registrar of Companies who, under existing company legislation, must be notified of any take-over scheme, to report to him in each particular case as to any evidence or indication that:—

- (a) the offeror has not the financial or managerial strength to develop the offeree company;
- (b) the offeror has a bad reputation (whether in a political, commercial, industrial or social context) in relation to its other activities;
- (c) the take-over would or might infringe any guidelines for foreign investments that are adopted in the future by the Federal Government;
- (d) the company being taken over was—
 - (i) of particular significance in relation to the Victorian or Australian economy; or
 - (ii) of particular significance because of the nature of the activities of the company; or
 - (iii) if the offeree company was subject to special duties or entitled to special privileges under Victorian legislation;
- (e) the offer was supported by the directors of the offeree corporation and by the majority of the shareholders; and
- (f) the successful completion of the take-over would lead to the injection of new funds, advance technology and better management.

Evidence of the matters referred to in paragraphs (e) or (f) would indicate that a matter should not be referred. Sir George said that each case would be carefully considered but he emphasized that the general approach would be that reference should only be made in an exceptional case where it was clear that the general public interest might be involved."

APPENDIX D

Source: McCarthy, *The Great Big Australian Takeover Book* (1973) Appendix 10

When information for this book was being assembled, one of the most obvious starting points seemed to be an analysis of specific takeovers during recent years. An American graduate student, John Bushnell, made a study of this nature in writing *Australian Company Mergers 1946-1959**, which was published in 1961. This book is certainly of interest to the specialist, the academic, and other researchers in the field. But it soon became obvious that a takeover by takeover analysis of the events since 1959 would not result in the type of book needed to expose and examine the broader social aspects of the takeover phenomenon in Australia. It is the process of growth by expansion and acquisition that explains most takeovers in Australia. A summary of the actual takeovers merely provides hundreds of examples and masses of information to support this view.

Nevertheless, although this book is not intended to be a detailed description of the past thirteen years' takeovers in Australia, a great amount of information has been collected. The hundreds of examples of the takeover process between 1960 and 1972 serve as an epilogue to the explanation of the phenomenon. Some readers may be astounded by the number of takeovers involved and will no doubt wonder what effects the changes in jobs and people and organization have already had. Others will see this list as an indicator of the natural forces of economics operating to cleanse the corporate system and increase efficiency. There may be others who accept this list as the first complete, accurate and authoritative summary of Australian takeovers during the last thirteen years. To all such readers, several warnings are offered.

The list is not complete. It includes all takeovers of commercial importance that resulted from formal takeover offers within the terms of the State Companies Act. It includes, so far as can be ascertained, all takeovers during the period that have resulted in companies' being delisted from the Sydney and Melbourne Stock Exchanges. But Australia has six quite separate Stock Exchanges; and many small, little-known companies taken over were listed only on one exchange in a minor State. These takeovers have generally been excluded to keep the list to an acceptable length and to emphasize the best-known takeovers.

In other cases control of companies has changed, not as a result of formal takeovers, but as a result of share purchases on the stock market, special issues or placements of new shares, or private off-market sales. Such changes of control are not always announced, and the transfer of control, even if it includes a complete change of the board, is not necessarily regarded as a takeover within the terms of the Companies Acts. There are means of ascertaining all such changes of control, but such an exercise was not considered either worth while or necessary for the purpose of this book. It is a potential subject for a graduate student or a statistician.

Even with all of these reservations and exclusions, the list included is both voluminous and illuminating. Many of the names recorded in the first column are still in use although these companies are now part of larger groups. But others have been out of use for many years. The motel industry, sand and gravel, ready mixed concrete and others provide many examples of names that disappeared long ago. They may still be included in the list of subsidiaries of the parent company in its annual report, but many have long been stripped of all assets and activities. In other cases the names have been changed and the corporate structures sold off to new owners for re-use in other fields.

Yet in these days of reminiscence and nostalgia, most readers will find the name of a past employer, client, supplier, or customer.

The second column indicates clearly that some companies have been very much more aggressive than others. The third column records that many medium and large fish are in turn eaten by bigger fish. The process of aggregation continues without respite.

The third column also marks with an asterisk (*) a large and growing group of companies. All companies so marked are now either owned totally by foreign companies or subject to significant foreign control.

<i>Companies Taken Over</i>	<i>New Owners</i>	<i>Comments</i>
1960		
Ellis & Clark (Holdings) Ltd. Industrial & Commercial Holding Group Ltd.	Warburton O'Donnell Ltd.	
Holeproof Industries Ltd. C.C. Engineering Industries Ltd. C.C. Die Castings Ltd. J. Connolly Ltd. Matthews, Thompson & Co. Ltd. Rockmans Ltd. Creamoata Ltd. Australian Investment Trust Ltd. Australian Metropolitan Life Assurance Co. Ltd. Western Stores Ltd. Southern Advances Ltd. Hurl & Douglas Ltd. Ve-Toy Biscuits Holdings Ltd. McIlwraths Holdings Ltd. Yellow Cabs Holdings Ltd. Pasco Industries Ltd. Gibson Battle & Co. Ltd. Jaywoth Besser Ltd. A. E. Goodwin Ltd. Farmers (Holdings) Ltd. Petrochemical Holdings Ltd. Ingham Plaster Co. Ltd. Concrete Enterprises Holdings Ltd.	Lanray Industries Ltd. Factors Ltd. Concrete Industries (Monier) Ltd. Concrete Industries (Monier) Ltd. Lend Lease Corporation Ltd. G. J. Coles & Co. Ltd. Factors Ltd. Quaker Oats Co., U.S.A. Australian Investment & Development Ltd.	* T/O by Dunlop Aust., 1969 * Redland Group, U.K. * Redland Group, U.K.
Australian Wool Brokers & Produce Co. Ltd. Intercolonial Investment Land & Building Co. Ltd.	Mercantile Mutual Insurance Co. Ltd. Farmers (Holdings) Ltd. Astor Hotel Motels Ltd. Concrete Industries (Monier) Ltd. R. M. Gow & Co. Ltd. Woolworths Ltd. Ampol Petroleum Ltd. Dodds Consolidated Industries Ltd. Tutt Bryant Ltd. Concrete Industries (Monier) Ltd. A. G. Healing Ltd. Myer Emporium Ltd. Boral Ltd. Colonial Sugar Refining Co. Ltd. Australian Blue Metal Ltd.	T/O by Myer Emporium, 1960 * Redland Group, U.K.
Kelly and Lewis Ltd. Reliance Industries Australia Ltd. Industrial Steels Ltd. Brookhouse (holdings) Ltd. Metropolitan Portland Cement Ltd.	Hooker Corporation Ltd.	T/O by Clyde Industries, 1972
Consolidated Tin Dredging Co. Ltd. New England Antimony Mines N.L. Streets Ice Cream Ltd. American Motor Courts Ltd. Brunton's (Holdings) Ltd. Jusfrute Ltd. United Insurance Co. Ltd. Clyde Brick Co. Ltd. Beale & Co. Ltd. Metal Products Holding Co. Ltd. Excelsior Collieries Coke Works Ltd. Kande Kitchenware Ltd. Hordern Brothers Ltd Standard Portland Cement Co. Ltd. Donson Products Ltd. Sydney Exchange Co. Robertson & Mullens Ltd.	Mercantile Mutual Insurance Co. Ltd. Brambles Industries Ltd. Marley Group of Great Britain A. E. Goodwin Ltd. Associated Rural Industries Ltd. Commonwealth Portland Cement Co. Ltd.	*
	Ready Mixed Concrete Ltd. Consolidated Metal Products Ltd. Unilever Australia Ltd. Latee Investments Ltd. Fielders Ltd. Keith Harris & Co. Ltd. The South British Insurance Co. Ltd. Newbold General Refractories Ltd. Ralph Symonds Ltd. John Mellwraith Industries Ltd. South Clifton Collieries Pty. Ltd. Hackshalls Ltd. Anthony Hordern & Sons Ltd Concrete Industries (Monier) Ltd. Sims Consolidated Ltd. Hooker Corporation Ltd. Angus and Robertson Ltd.	A. G. Healing Group * Associated Portland Cement Group, U.K. T/O by CSR and BMI, 1964 T/O by Sims Consolidated, 1970 *
		Receiver appointed, 1964
		* T/O by Cope Allman (Aust.), 1968 T/O by Waltons, 1970 * Redland Group, U.K.
		T/O by Ipee Insurance, 1970

<i>Companies Taken Over</i>	<i>New Owners</i>	<i>Comments</i>
Lennons Hotel Ltd. Lennons Toowoomba Hotel Ltd. Lennons Broadbeach Hotel Ltd. Glazebrooks Paints & Chemicals Ltd.	Federal Hotels Ltd. Federal Hotels Ltd. Federal Hotels Ltd. Clyde Industries Ltd.	Controlled by Tjuringa Securities Controlled by Tjuringa Securities Controlled by Tjuringa Securities
1961		
Marley Reliance Ltd. Holdenson & Nielson (Products) Ltd. Queensland Brewery Ltd. W. Nevill & Co. Ltd. Jayworth Masonry Ltd. Whakatane Board Mills Ltd. Australian Blue Metal Ltd. Crafton Brewing Co. Ltd. E. A. Marr Industries Ltd. Light Concrete Holdings Ltd. Southern Aluminium Ltd. Grocery & General Merchants Ltd. Travelana Holdings Ltd. Autobric Industries Ltd. James Sandy (Industries) Ltd. Dangar, Gedye & Malloch Ltd. Consolidated Beverage Co. Ltd. Foy & Gibson (W.A.) Ltd. Claude Neon Industries Ltd. Queensland Machinery Co. Ltd. Adelaide Potteries Ltd. Huddard Parket Industries Ltd. Johnell Ltd. Lanes Holdings Ltd. Presha Engineering Ltd. Leo Buring (Holdings) Ltd. R. H. Lawrenson Holdings Ltd. Bryson Industries Ltd.	Marley Tile (Holding) Co. Ltd. Petersville Australia Ltd. Carlton & United Breweries Ltd. Edwards Dunlop & Co. Ltd. Jayworth Industries Ltd. N.Z. Forest Products Ltd. Ready Mixed Concrete Ltd. Toohesys Ltd. McDonald Industries Ltd. Lend Lease Corporation Ltd. Comalco Industries Pty Ltd. Petersville Australia Ltd. Mascot Industries Ltd. Lend Lease Corporation Ltd. A. J. Chown Holdings Ltd. Frigrite Ltd. Tarax Drinks Holdings Ltd. Cox Brox. (Australia) Ltd. W. R. Carpenter Holdings Ltd. Evans Deakin Industries Ltd. PCH Industries Ltd. Boral Ltd. Fibre Containers Ltd. Amalgamated Chemicals Ltd. Fire Fighting Enterprises Ltd. Lindeman (Holdings) Ltd. Lawrenson Alumase Holdings Ltd. Automotive & General Industries Ltd.	*
Hodgson's Holdings Ltd. Greens Products Ltd.	Waltons Ltd. Publishers Holdings Ltd.	T/O by Burns, Philp & Co., 1972
Die Casters Ltd.	Australian Chemical Holdings Ltd.	
Carapark Holdings Ltd. Richardson & Wrench Ltd. National Minerals Holdings Ltd. Mutual Development Corporation Ltd. Bulolo Gold Dredging Ltd. Beacon Credit Corporation Ltd. T. C. Bairne Ltd. Engineering Supply Co. of Australia Ltd. W. H. Hole & Co. Ltd. Melbourne Steamship Co. Ltd. Z.R. Holdings Ltd.	Travelodge Australia Ltd. Lend Lease Corporation Ltd. Peko-Wallsend Ltd. James Wallace Holdings Ltd. Placer Development Ltd. Beneficial Finance Co. Ltd. David Jones Ltd. Intercolonial Boring Co. Ltd. H. Pettiford Holdings Ltd. Howard Smith Ltd. Associated Minerals Consolidated Ltd.	* T/O by Leigh Mardon, 1967 * T/O by Continental Oil Co., 1966 * T/O by Philip Morris, 1971 * Consolidated Gold Fields Group T/O by Fire & All Risks Insurance, 1966
Kosciusko Thredbo Ltd. Associated Minerals Consolidated Ltd. Gordon Edgell & Sons Ltd. Lombard Australia Ltd. The Sydney Cold Stores Ltd. Central Radio Mines N.L. Patons & Baldwins (Aust.) Ltd. Pick-Me-Up Food Products Ltd.	Lend Lease Corporation Ltd. Consolidated Gold Fields Australia Ltd. Petersville Australia Ltd. Lombard Banking Ltd. Marcus Clark & Co. Ltd. Leo Investments Ltd. J. P. Coats, Patons & Baldwins Ltd. Mauri Bros. & Thomson Ltd.	T/O by Australian Consolidated Press, 1972 T/O by Hercules Powder Co. U.S.A. 1964 * T/O by S.P.P., 1972
1962		
Sargood Gardiner Ltd. Ophir Motels Ltd. Plastic Sheeting Ltd. A. Hall & Co. Ltd. C. C. Rawson Ltd. The Queensland National Pastoral Co. Ltd. Quantas Wentworth Holdings Ltd.	Australia United Corporation Ltd. Australian Motel Industries Plastic Coatings Ltd. Greenwood Ltd. F & T Industries Ltd. Swift Pastoral Development Ltd. Kenmaster Holdings Ltd.	T/O by Hotel Metropole, 1968 T/O by Overseas Corporation, 1965

Companies Taken Over	New Owners	Comments
W. A. Hodgkinson Ltd. Motors Ltd. Robert Harper & Co. Ltd. Coffs Harbour Rutile N.L. Cable (1956) Ltd. C. S. Rowtree & Co. Ltd. Kangaroo Petroleum Holdings Ltd. Lincoln Mills (Aust.) Ltd. Thirlwell & McKenzie Ltd. Smalls Chocolate Holdings Ltd. Frederick Rose Ltd. Murfett Holdings Ltd. Victorian Woollen Co. Ltd. N. B. Love Industries Ltd. Ecks Holdings Ltd. Titanium Minerals Ltd. Sargent's Ltd. R. H. O'Regan (Carriers) Ltd. John Darling & Son (Aust.) Ltd. Chevron Queensland Ltd.	Evans Deakin Industries Ltd. Australian Guarantee Corporation Ltd. Ralston Purina Co., St. Louis Kathleen Investments (Aust.) Ltd. Kathleen Investments (Aust.) Ltd. Downes Stores Pty. Ltd. H. C. Sleigh Ltd. Cleckheaton Ltd. Evans Deakin Industries Ltd. Life Savers (Australasia) Ltd. Tasman Group Services Ltd. National Consolidated Ltd. John Vicars & Co. Ltd. George Weston (Aust.) Pty. Ltd. Tarax Drinks Holdings Ltd. Associated Minerals Consolidated Ltd. Gillespie Bros. Holdings Ltd. Yellow Express Carriers Ltd. Allied Mills Ltd. I.A.C. (Holdings) Ltd. and Commercial & General Acceptance Ltd. Mayne Nickless Ltd. H. H. Webb & Co. Ltd. Milton Corporation Ltd. Marcus Clark & Co. Ltd.	T/O by Bank of N.S.W., 1972 * * 29% held by Caltex In liquidation T/O by Textile Holdings, 1965 * T/O by Cadbury Schweppes, 1972 * Consolidated Gold Fields Group T/O by Fleetways, 1972 * T/O by Waltons, 1966
Antill Ranger (Holdings) Ltd. Wood Coffin Funerals Pty. Ltd. Industrial Building Society Bon Marche Ltd.		
1963 Country & Federal Holding Ltd.	Victoria Insurance Co. Ltd.	T/O by The New Zealand Insurance, 1968 Under Official Management * T/O by St. James Properties, 1972
Plumbers' Supplies Ltd. Savoy Corporation Ltd. Hasemer Crane & Engineering Ltd. Richardson Holdings Ltd. Pastoral Development (Holdings) Ltd. Mayfair Hams Ltd. Barlow Ceramics Ltd. California Production Ltd. Gas Supply Co. Ltd. W. C. Douglas Ltd. Broomfield Ltd. Hire Purchase Securities Ltd. Ducon Industries Ltd. Pacific Oxygen Ltd. Westcott Hazell & Co. Ltd. Rubbertex Industries Ltd. Victorian Dairies Ltd. General Plastics Ltd. Australia Silknit Ltd. Rosella Preserving & Manufacturing Co. Ltd. H. G. Palmer (Consolidated) Ltd. Salamander Salt Ltd. Mount Lyell Investments Ltd. Peter Lloyd Industries Ltd. Olympic Bowling Centres Ltd. Discount Facilities Ltd. A.E.I. Ltd. British Standard Machinery Co. Ltd. Holeproof Industries Ltd. Vesta Ltd.	Epstein & Co. Ltd. John R. Hall, Esq. Malco Industries Ltd. Milter Pty. Ltd. Dalgety & N.Z. Loan Ltd. Swift Australian Co. Pty. Ltd. Overseas Corporation (Aust.) Ltd. Esmark Pty. Ltd. Boral Ltd. Cerebos (Aust.) Pty. Ltd. Sorby's Ltd. H. G. Palmer (Consolidated) Ltd. British Plessey Co. Ltd. Commonwealth Industrial Gases Ltd. A. E. Goodwin Ltd. Hardie Rubber Co. Pty. Ltd. Consolidated Foods Ltd. Beutron Australia Ltd. Murray, Maguire & Co. Ltd.	*
Mutual Underwriting & Development Ltd.	Unilever Australia Holdings Pty. Ltd. The M.L.C. Ltd. C. H. Degotardi Ltd. Boral Ltd. Stack & Co. Ltd. Marrickville Holdings Ltd. Lensworth Finance Ltd. Associated Electrical Industries Ltd. Clyde Industries Ltd. Prestige Ltd. Associated Battery Makers of Australia Pty. Ltd. Fairway Holdings Pty. Ltd.	T/O by Macwood, 1966 * G.E.C. Group * T/O by Dunlop Aust., 1968 * M.U.D. now part of Slater Walker Group
1964 Foy & Gibson (W.A.) Ltd. South Alligator Uranium Ltd. Retailers Acceptance Ltd. Ready Mixed Concrete Ltd. Bellambi Coal Co. Ltd.	David Jones Ltd. Metals Exploration N.L. Alliance Holdings Ltd. The Colonial Sugar Refining Co. Ltd. and Blue Metal Industries Ltd. Consolidated Gold Fields Australia Ltd.	*
		Controlled by M.L.C. Insurance

<i>Companies Taken Over</i>	<i>New Owners</i>	<i>Comments</i>
Audiphone Holdings of Australia Ltd.	E. B. Phillips, V. T. Horne and A. J. Welinski	
Swallow & Ariell Ltd.	Arnotts Ltd.	*
P.P.W. Holding Ltd.	Cope Allman (Aust.) Ltd.	
Petries Holdings Ltd.	Permewan Wright Ltd.	
Mutual Stores Holdings Ltd.	Cleckheaton Ltd.	
Courtaulds (Aust.) Ltd.	Courtaulds Hilton Ltd.	*
George G. Clarke Ltd.	Kolotex Holdings Ltd.	
Bruce Pie Industries Ltd.	F & T Industries Ltd.	
A. Goninan & Co. Ltd.	Howard Smith Ltd.	
Burgess Bros. Ltd.	Cascade Brewery Co. Ltd.	
Albion Quarries Ltd.	Boral Ltd.	
Reid's Quarries Ltd.	Boral Ltd.	
Illawarra Fireclay & Brick Co. Ltd.	Blue Metal Industries Ltd.	
Automotive Components Ltd.	Repco Ltd.	
A. W. Fairfax Ltd.	A. E. Goodwin Ltd.	A. G. Healing Group
Phillips Oil Products Ltd.	Phillips Petroleum Aust. Pty. Ltd.	*
Cargo Distributors Ltd.	Transport Development Group Ltd.	*
Astor Consolidated Mills Ltd.	Emu Wool Industries Ltd.	*
Watson & Crane Holdings Ltd.	G. E. Crane Holdings Ltd.	
Processing Industries Ltd.	Astor Consolidated Mills Ltd.	*
Metropolitan Building Investments Ltd.	Argo Investments Ltd.	
Australian Chemical Holdings Ltd.	Hercules Powder Co. (U.S.A.)	*
 1965		
Kalgoorlie Goldfields Petroleum N.L.	R. A. Brierley Investments Ltd.	
Australian Equity Corporation Ltd.	Commercial & General Acceptance Ltd.	*
Gas Drillers Ltd.	Surveys & Market Research Ltd.	
Hooker Finance Co. Ltd.	The Fidelity Bank of Pennsylvania and Lockheed Aircraft International Inc.	*
Stocks & Realty Corporation Ltd.	Lockheed Aircraft International Inc.	
Sungei Bider Tin Dredging Ltd.	Stocks & Holdings Ltd.	
Diamond Foods Ltd.	Trench Mines Ltd.	
Hawkesbury Development Co. Ltd.	Associated Products & Distribution Pty. Ltd.	* British Tobacco Group
Clifford Love & Co. Ltd.	R. A. Brierley Investments Ltd.	* Industrial Equity Group
Plastic Coatings Ltd.	Corn Products Co. Ltd.	
General Foods Corporation Holdings Ltd.	Overseas Corporation (Aust.) Ltd.	
Motel Corporation (Aust.) Ltd.	Associated Products & Distribution Pty. Ltd.	* British Tobacco Group
Northwest Tantalum N.L.	Travelodge Australia Ltd.	* T/O by S.P.P., 1972
Harrison Ltd.	Mineral Securities Aust. Ltd.	In liquidation
Rumseys Holdings Ltd.	Overseas Corporation (Aust.) Ltd.	
Australian Woollen Mills Ltd.	Yates Seeds Ltd.	
John Vicars & Co. Ltd.	Textile Holdings Ltd.	
Morley Johnson Holdings Ltd.	Textile Holdings Ltd.	
Hornibrook Ltd.	Milton Corporation Ltd.	
Pacific Island Timbers (Holding) Ltd.	Wood Hall Holdings Ltd.	
Machinery Distributors Ltd.	A.N.G. Holdings Ltd.	
	Murray, Maguire & Co. Ltd.	
 1966		
Sonnerdale Richardson David Brown Ltd.	David Brown Properties Pty. Ltd.	*
Moffat-Virtus Ltd.	Fir Fighting Enterprises Ltd.	
C. H. Degotardi Ltd.	Macwood Pty. Ltd.	
Fler Company Ltd.	Australian Controls Ltd.	
Merco Holdings Ltd.	Bestobell Australia Pty. Ltd.	*
Production Plant Ltd.	Eugen Hellinger and Leon Zausner	
Australian Beef Cattle Development Ltd.	Tropical Cattle Pty. Ltd.	
Cotties Ltd.	Parsons General Foods Ltd.	*
Thomas Brown & Sons Ltd.	Slater Walker Securities Ltd.	*
Marcus Clark & Co. Ltd.	Waltons Ltd.	
Kia Ora Gold Corporation N.L.	Shaw River Alluvials N.L.	
Harcos Steel Industries Ltd.	Gollin Holdings Ltd.	
Emu & Prospect Gravel & Road Metal Co. Ltd.	Blue Metal Industries Ltd.	
Rowlands Quarries Ltd.	Pioneer Concrete Services Ltd.	
Emu Bay Railway Co. Ltd.	EZ Industries Ltd.	
Gippsland Cement Ltd.	Australian & Kandes Cement Holdings Ltd.	
F. W. Williams Holdings Ltd.	Pioneer Concrete Services Ltd.	
H. B. Dickie Ltd.	Bond's Industries Limited	*
W. W. Campbell & Co. Ltd.	Tallerman & Co. Pty. Ltd.	Now Bonds Coats Patons

Companies Taken Over	New Owners	Comments
S.T.P. Holdings Ltd. Tennyson Textile (Holdings) Ltd. Automotive & General Industries Ltd. Cousins Transport Ltd. Cox Bros. (Aust.) Ltd. Wilbroc Industries Ltd. Amalgamated Chemicals Ltd. B. J. Ball Ltd.	Universal Textiles (Australia) Ltd. Fire and All Risks Insurance Co. Ltd. Thomas Nationwide Transport Ltd. Ralli Australia Pty. Ltd. Repco Ltd. Continental Oil Co., U.S.A. Edwards Dunlop & Co. Ltd.	* T/O by Dunlop Aust., 1969
1967		
Brown & Broad Ltd. Petroleum Investments Ltd. Lazarus Consolidated Ltd. Wyong Minerals Ltd. Harper Davidson Industries Ltd. Whale Industries Ltd. Automatic Totalisators (U.S.A.) Ltd. J. Bayley & Sons Ltd. Crystal Clothing Industries Ltd. Business Equipment Holdings Ltd. Colbre Holdings Ltd. Centenary Estates Ltd. Dodge Consolidated Industries Ltd. Fibre Containers Ltd. MacRobertson (Aust.) Ltd. Mobile Industrial Equipment Ltd. F. G. Kerr & Co. Ltd. Pettiford Holdings Ltd. Adelaide Rope & Nail Co. Ltd. Grouped Underwriters Ltd. Hoadley's Holdings Ltd. Mt. Morgan Ltd. The Australia Hotel Co. Ltd.	PGH Industries Ltd. National Charter Association of California Glen Alpin Pty. Ltd. Associated Minerals Consolidated Ltd. Larkie Consolidated Industries Pastoral Developments Holdings Ltd. Automatic Totalisators Ltd. Associated Leathers Ltd. Ashfrith Pty. Ltd. Litton Industries Incorporated Mauri Bros. & Thomson Ltd. Hooper Property Holdings Pty. Ltd. Fibre Containers Ltd. Leigh-Mardon Pty. Ltd. Cadbury Fry Pascall Australia Ltd. Pizsey Ltd. J. Kohler & Sons Ltd. Philips Electrical Industries Pty. Ltd. Kinnears Ropes (Aust.) Ltd. Group Holdings Ltd. James Stedman Ltd. Peko-Wallsend Ltd. M.L.C. Assurance Co. Ltd. and Lend Lease Corporation Ltd. Milton Corporation Ltd. Clyde Industries Ltd.	* T/O by F & T Industries, 1972 * * * Consolidated Gold Fields Group
Australian Cash Orders Ltd. Glazebrooks Paints & Chemicals Ltd.		
1968		
A. & I. Discounters Ltd. Brownbuilt Ltd. General Credits Holdings Ltd. Harbour Lighterage Ltd. Bebarfalds Ltd. Duly & Hansford Ltd. Mark Foys Ltd. Lithgow Valley Colliery Co. Ltd. Stirling Henry Ltd. Hackshalls Ltd. Minerva Centre Ltd. Ronald J. Murray Ltd. Houghton & Byrne Holding Ltd. Prestige Ltd. United Holdings Ltd. Vanderfield & Reid Ltd. McLaren Industries Ltd. Beacon Investment Ltd. Chapmans Ltd. Federation Credits Ltd. R. Fowler Ltd. King Island Scheelite (1947) Ltd. Shelleys Drinks Ltd. Mick Simmons Holdings Ltd. W. Jacobs Ltd. Deposit & Investment Co. Ltd. Rushcutter Ltd. Victorian Quarries Ltd. Australian Motel Industries Ltd.	Electronic Industries Ltd. J. Lysaght (Aust.) Ltd. Commercial Bank of Aust. Ltd. J. Fenwick & Co. Pty. Ltd. Ajax Insurance Co. Ltd. Cam Gears/T.R.W. Pty. Ltd. McDowells Ltd. Slater Walker Aust. Ltd. Murray, Maguire & Co. Ltd. Cope Allman (Aust.) Ltd. Industrial Equity Ltd. Hydrotherm Ltd. Powell's Pest Control Pty. Ltd. Dunlop Australia Ltd. Agen Holdings Ltd. Zunder Pty. Ltd. Australian Investments Pty. Ltd. Milton Corporation Ltd. Alexanders Ltd. Milton Corporation Ltd. Newbold General Refractories Ltd. Peko-Wallsend Ltd. Associated Products & Distribution Pty. Ltd. Nelson Tobacco Co. Pty. Ltd. Australian Bacon Ltd. Soul Pattinson (Finance) Pty. Ltd. Travelodge Australia Ltd. Pioneer Concrete Services Ltd. Hotel Metropole Ltd.	* T/O by Philips Industries, 1970 T/O by B.H.P., 1969 T/O by Brambles Industries, 1969 * I.A.C. Group * T/O by Waltons, 1972 * * * * * Murray, Maguire Group * * * * * Aetna Life Group
Captain Products Ltd. Celco Holdings Ltd. Drug Houses of Australia Ltd.	Mauri Bros. & Thomson (Aust.) Ltd. Kempthorne Mistral Ltd. Slater Walker Aust. Ltd.	* British Tobacco Group * Rothmans Group
		* T/O by S.P.P., 1972
		T/O by Stocks & Parks (Trading), 1969

Companies Taken Over	New Owners	Comments
Winns Newcastle Ltd.	Winns Ltd.	
W. C. Stevens Holdings Ltd.	Repcos Ltd.	
Dural Leeds Holdings Ltd.	Hunter Douglas Ltd.	*
Dinmore Pottery & Hardware Ltd.	Q.U.F. Industries Ltd.	
Ernest Hiller Holdings Ltd.	Dunlop Aust. Ltd.	*
King & King Ltd.	Hopper Bailiffs Industries Ltd.	
Lawrence & Hanson Holdings Ltd.	Kempthorne Mistral Ltd.	
MacRobertson Miller Airlines Ltd.	Ansett Transport Industries Ltd.	
Tyree Industries Ltd.	Westinghouse Electric Corporation	*
Smith Sons & Rees Ltd.	Repcos Ltd.	
1969		
Finance Corporation of Aust. Ltd.	The Bank of Adelaide	
Australian General Insurance Co. Ltd.	Mercantile Mutual Insurance Co. Ltd.	
Warringah Brick & Pipe Holdings Ltd.	Boral Ltd.	
J. S. Grey Industries Ltd.	Edwards Dunlop Co. Ltd.	
Harden & Johnston Ltd.	Martell Harvey Pty. Ltd.	
Nightingale Supply Co. Ltd.	Smith Mitchell & Co. Ltd.	*
Frank O'Neill Industries Ltd.	Dunlop Australian Ltd.	*
Simalex Ltd.	Kiwi International Co. Ltd.	
Sorby's Ltd.	Kempthorne Mistral Ltd.	
Western Motor Co. Ltd.	LNC Industries Ltd.	
Booth Industries Ltd.	PGH Industries Ltd.	
Cellulose Australia Ltd.	Australian Paper Manufacturers Ltd.	*
Ferris Industries Ltd.	Hawker Siddley Aust. Ltd.	
Hunter Motels Ltd.	Incorporated Investments Pty. Ltd.	
McNamee Holdings Ltd.	Simon Engineering (Aust.) Ltd.	*
Moran & Cato (Aust.) Ltd.	Permewan Wright Ltd.	
Pioneer Welding Holdings Ltd.	American Machine & Foundry Co. (Aust.) Pty. Ltd.	*
Universal Textiles Holdings Ltd.	Dunlop Aust. Ltd.	*
Wunderlich Ltd.	The Colonial Sugar Refining Co. Ltd.	
Compounders Ltd.	Reed Consolidated Industries Ltd.	*
D. Hardy & Sons Ltd.	Toolang Estates Pty. Ltd.	
Hotel Metropole Ltd.	Stocks & Parkes (Trading) Ltd.	
Ponsford, Newman & Benson Ltd.	Royal Sovereign Pencil Co. Ltd.	*
Seakist Foods Ltd.	Brooke Bond (Aust.) Pty. Ltd.	*
W. T. Coggins Holdings Ltd.	Pharmis Pty. Ltd.	
Farmour Drillers N.L.	Flinders Petroleum N.L.	
Nutt & Muddle Holdings Ltd.	Cope Allman (Aust.) Ltd.	*
Consolidated Milk Industries Ltd.	Petersville Aust. Ltd.	
Hardie Holdings Ltd.	James Hardie Asbestos Ltd.	*
Thompson & Scougall Industries Ltd.	Borg Warner (Aust.) Ltd.	
Davies Coop & Co. Ltd.	Bradmill Industries Ltd.	
John Lysaght (Aust.) Ltd.	The B.H.P. Co. Ltd.	
Steel Mills Ltd.	Boral Ltd.	
Union Carbide Aust. Ltd.	Union Carbide Aust. & N.Z. Ltd.	*
Chemical Materials Ltd.	Beith Chemical Materials Ltd.	*
Frederick Ash Ltd.	Swans Ltd.	
Bramac Plastalon Ltd.	Beau Monde (Aust.) Ltd.	
Drawing Office Industries Ltd.	Consolidated Reprographics Ltd.	
Harris Holdings Ltd.	Dillingham Corporation of Aust. Pty. Ltd.	
Western Titanium N.L.	Consolidated Gold Fields of Aust. Ltd.	
Emmotts Ltd.	J. B. Young Holdings Ltd.	
Metal Perforators Ltd.	Larke Consolidated Industries Ltd.	
O'Donnell Griffin Industries Ltd.	Warburton O'Donnell Ltd.	
Strata Holdings Ltd.	Mainline Corporation Ltd.	
Gentex Ltd.	Osti Holdings Ltd.	
Improved Industries Ltd.	Larke Consolidated Industries Ltd.	
Michael Nairn & Co. (Aust.) Ltd.	Austral Marine Securities (Aust.) Pty. Ltd.	
Resources of Australia Investment Co. Ltd.	Pine Vale Mines Ltd.	
Shipping Newspapers Ltd.	Industrial Equity Ltd.	*
Corporate Mining Investments of Aust. Ltd.	Mining Finance Corporation Ltd.	
Fenwick Holdings Ltd.	Brambles Industries Ltd.	
Jacoby Mitchell Holdings Ltd.	Kempthorne Mistral Ltd.	
North Aust. Uranium Corporation N.L.	Aberfoyle Ltd.	
Anthony Squires Holdings Ltd.	Dunlop Aust. Ltd.	
Allen Taylor & Co. Ltd.	Blue Metal Industries Ltd.	
Factore Ltd.	Dunlop Aust. Ltd.	

<i>Companies Taken Over</i>	<i>New Owners</i>	<i>Comments</i>
1970		
Allied Investments Ltd.	Development Holdings Ltd.	
Packaging & Printing Industries Ltd.	W. E. Smith Ltd.	
Appleton Industries Ltd.	Beaver Underwriting Corporation Ltd.	
Anthony Hordern & Sons Ltd.	Waltons Ltd.	
Hunt Bros. (Holdings) Ltd.	LNC Industries Ltd.	
Motor Spares Ltd.	Repcos Ltd.	
Northern Suburbs Brick Co. Ltd.	I.C.D. Ltd.	
Pioneer Industries Ltd.	John Storey Pty. Ltd.	
Swans Ltd.	Industrial Equity Ltd.	
Intercolonial Boring Co. Ltd.	Dunlop Aust. Ltd.	
Alluvial Gold Ltd.	Beaver Underwriting Corporation Ltd.	
McAlister & Williams (Holdings) Ltd.	McPhersons Ltd.	
Ravenshoe Tin Dredging Ltd.	Beaver Underwriting Corporation Ltd.	
Electronic Industries Ltd.	Philip Industries Holdings Ltd.	
Holidaywise Ltd.	Philip Felman, Esq.	
Hilton Bros. (Holdings) Ltd.	Osti Holdings Ltd.	
Universal Textiles Holdings Ltd.	Dunlop Aust. Ltd.	
Angus and Robertson Ltd.	Ipec Insurance Ltd.	
Elmaco Industries Ltd.	F & T Industries Ltd.	
Jordan Chemicals Ltd.	Emery Industries Inc., U.S.A.	
Tableland Tin Dredging N.L.	Southland Mining Ltd.	
Consolidated Metal Products Ltd.	Sims Consolidated Ltd.	
Fowlers Vacola Manufacturing Co. Ltd.	Hooper Bialie Industries Ltd.	
Austral Steel Holdings Ltd.	Australian National Industries Ltd.	
London Stores Ltd.	Beau Monde (Aust.) Ltd.	
Schofield Holdings (Aust.) Ltd.	Kemphorne Mistral Ltd.	
Shelton Industries Ltd.	F & T. Industries Ltd.	
South Australian Telecasters Ltd.	TVW Ltd.	
Turner Industries Ltd.	Stanley-Titan Pty. Ltd.	
Burns Consolidated Ltd.	Tasman U.E.B. Holdings Ltd.	
The Invincible Colliery Ltd.	Wallamaine Colliery Pty. Ltd.	
Holeproof Industries Ltd.	Dunlop Aust. Ltd.	
Prestige Ltd.	Dunlop Aust. Ltd.	
Besser Vibrapac Masonry	Boral Basic Industries Ltd.	
Papuan Apinaipi Petroleum Co. Ltd.	Associated Australian Oilfields N.L.	
Vehicle & General Insurance Co. Ltd.	Cowan Group (Holdings) Ltd.	
1971		
Neon Signs (A'sia) Ltd.	Claude Neon Industries Ltd.	
Associated Continental Petroleum N.L.	Associated Australian Oilfields N.L.	
Crooks National (Holdings) Ltd.	Grocery Investments Pty. Ltd.	
Synthetic Textures Ltd.	Otara Investments Pty. Ltd.	
Pelaco Ltd.	Russna Pty. Ltd.	
Sargeants Engineering Ltd.	Australian National Industries Ltd.	
F. H. Stephens (Consolidated) Ltd.	Mayne Nickless Ltd.	
Country Club Holdings Ltd.	Speedo Holdings Ltd.	
National Bag Co. of Aust.	Rheem Australia Ltd.	
Davison Paints Ltd.	Watty Ltd.	
Fred Clark (Holdings) Ltd.	Baradeen Aust. Pty. Ltd.	
Associated Freney Oilfields	Associated Australian Oilfields N.L.	
Warringah Brick & Pipe Holdings Ltd.	Premium Brick Pty. Ltd.	
Jaywoth Industries Ltd.	Boral Basic Industries Ltd.	
Lake View & Star Ltd.	Poseidon Ltd.	
Samin Ltd.	Poseidon Ltd.	
Macdougalls Ltd.	Ozapaper Ltd.	
Edments Holdings Ltd.	Ala Pty Ltd.	
Harris Scarfe Ltd.	Baradeen Aust. Pty. Ltd.	
J. Murray More (Holdings) Ltd.	Tubemakers of Aust. Ltd.	
Sub-Oceanic Minerals N.J.	Seamander Mining Corp. N.L.	
W. E. Smith Ltd.	United Packages Ltd.	
Richmond-Tweed TV Ltd.	Northern Rivers Television Ltd.	
Rex Aviation Holdings Ltd.	Commonwealth Aircraft Corporation Pty. Ltd.	
Sydney Holdings Ltd.	F. W. Sutton, Esq.	
Johnson Leather Co. Ltd.	Aleacer Pty. Ltd.	
Stegbar Ltd.	F & T Industries Ltd.	
Lindeman Holdings Ltd.	Philip Morris (Aust.) Ltd.	
		General Mining & Investment Group

<i>Companies Taken Over</i>	<i>New Owners</i>	<i>Comments</i>
Tagus Ltd.	Slater Walker Aust. Ltd.	*
A.C.F. and Shirleys Fertilizers Ltd.	ICI Australia Ltd.	*
Brisbane Gas Co. Ltd.	Gas Supply Co. Ltd.	
Youngusband Ltd.	Elder Smith Goldsborough Mort Ltd.	Boral Group
Albury Upper Murray TV Ltd.	Riverina Television Ltd.	
Henry Berry & Co. (A'sia) Ltd.	Beatrice Australia Pty. Ltd.	*
W. H. Lober Holdings Ltd.	Nepos Pty. Ltd.	
Board Mills of Aust. Ltd.	Eastralian Securities Ltd.	
Halifax Holdings (Aust.) Ltd.	Slater Walker Aust. Ltd.	*
Buckingham Holdings Ltd.	Tjuringa Securities Ltd.	
Brighton Cement Holdings Ltd.	Adelaide Brighton Cement Ltd.	
Cadbury Fry Pascall Aust. Ltd.	Cadbury Schweppes Aust. Ltd.	*
Schweppes (Aust.) Ltd.	Cadbury Schweppes Aust. Ltd.	*
Cahills Holdings Ltd.	The Nestle Co. (Aust.) Ltd.	*
Cohn Bros. Ltd.	L. & I. Pty. Ltd.	
Cossey Investment & Finance Co. Ltd.	Industrial Equity Ltd.	*
Cribb & Foote Ltd.	Walter Reid & Co. Ltd.	
The Geelong Gas Co.	Gas & Fuel Corporation of Victoria	
G. W. Green & Sons (Holdings) Ltd.	Wilke & Co. Ltd.	
Hart Holdings Ltd.	Westralian Securities Ltd.	
Huckson Industries Ltd.	National Consolidated Ltd.	
Salt Industries Ltd.	Cheetham Salt Consolidated Ltd.	
Thompson & Harvey Ltd.	Lloyds Holdings Ltd.	
Universal Holdings Ltd.	Supermarket Ltd.	
Beau Monde (Aust.) Ltd.	Slater Walker Aust. Ltd.	*
Colortone Holdings Ltd.	Lipton Macquarie Securities Ltd.	*
Silverwood & Beck Holdings Ltd.	F & T Industries Ltd.	
Anmand & Thompson Holdings Ltd.	LNC Industries Ltd.	
Mutual Underwriting & Development Ltd.	Slater Walker Aust. Ltd.	*
Genevieve Holdings Ltd.	Slater Walker Aust. Ltd.	*
Australian General Investment Ltd.	Australian Finance & Securities Ltd.	
1972		* T/O by Eastralian Securities, 1972
Coachcraft Ltd.	Industrial Equity Ltd.	
Kay Corporation Ltd.	First Redding Investments Pty. Ltd.	
Atvic Investments Ltd.	Horsley Design Co. Ltd.	
E. A. Machin & Co. Ltd.	Brooklands (Holdings) Ltd.	
Mid Eastern Oil N.L.	Woodside-Burmah Oil N.L.	
Woodside Oil N.L.	Woodside-Burmah Oil N.L.	
Brins Australia Ltd.	Murumba Minerals N.L.	
Esdale (Holdings) Ltd.	Watson Victor Holdings Ltd.	
Skipper Holdings Ltd.	Amalgamated Industries Ltd.	
McDowells Holdings Ltd.	Waltons Ltd.	
The Aust. Mont-de-Piete Loan & Deposit Co. Ltd.	Merbank Corporation Ltd.	
Model Dairy Industries Ltd.	Consolidated Foods Ltd.	
Australian Clays & Industrial Minerals Ltd.	Steetly Australasia Pty. Ltd.	
Yarra Falls Ltd.	Claude Neon Ltd.	
Alliance Petroleum Aust. N.L.	Alliance Oil Development Aust. N.L.	
James Stedman Ltd.	Rowntree Mackintosh (Aust.) Pty. Ltd.	
Hopetoun Minerals N.L.	Bridge Oil N.L.	
Kanieri Gold Dredging Ltd.	Australasian Mining & Oil Investments Ltd.	
Yellow Express Carriers Ltd.	Fleetways (Holdings) Ltd.	
Mindrill Ltd.	Rockbite Pty. Ltd.	
Piet Ltd.	British Tobacco Co. (Aust.) Ltd.	*
Consolidated Reprographics Ltd.	G.A.F. (Aust.) Pty. Ltd.	*
Citadel Mining & Investment Ltd.	Corporate Mining and Investments Ltd.	
Sutex Industries Ltd.	J.G.L. Investments Pty. Ltd.	
The Port Jackson & Manly Steamship Co. Ltd.	Brambles Industries Ltd.	
Olding Equipment Ltd.	Ateco Holdings Ltd.	
Wynn Winegrowers Ltd.	Allied Vintners Pty. Ltd.	
Irvine's Ltd.	Winthrop Investments Ltd.	
Arthur Cocks & Co. Ltd.	Hooper Bailie Industries Ltd.	
W. G. Watson Holdings Ltd.	Manufacturing Investments Ltd.	
Cresco Fertilisers Ltd.	W. R. Grace Aust. Pty. Ltd.	*
F.M.C. (Aust.) Ltd.	F.M.C. Corporation	*
		Tooheys Group

Companies Taken Over	New Owners	Comments
West Australian Newspapers Ltd.	The Herald and Weekly Times Ltd.	
Tasco Downing Industries Ltd.	Tasman U.E.B. Holdings Ltd.	*
Besser Holdings Ltd.	Goliath Cement Holdings Ltd.	
Dodds Consolidated Industries Ltd.	Clyde Industries Ltd.	
Samson Spray Equipment Ltd.	Tricentrol Industries Holdings Aust. Pty. Ltd.	*
Minster Ltd.	Capital Carpet Industries Pty. Ltd.	
Pitt Son & Badgery Ltd.	Philip Macquarie Pty. Ltd.	
G. N. Raymond Ltd.	Marogi Pty. Ltd.	
Commodore Ltd.	G. N. Frew and L. Erdi	
O'Neill Industries Ltd.	O'Neill Investments Pty. Ltd.	
Grenfell Securities Ltd.	General Mining & Investment Co. Ltd.	
Pendene Ltd.	Edwards Dunlop & Co. Ltd.	
Chandlers (Aust.) Ltd.	Development Holdings Ltd.	
A. J. Chown Holdings Ltd.	Burns Philp & Co. Ltd.	
Geo. Hall & Sons Ltd.	C. C. Bottlers Ltd.	
Westralian Securities Ltd.	Eastralian Securities Ltd.	
Don Industries Ltd.	Slater Walker Aust. Ltd.	
Osti Holdings Ltd.	Berlei Hestia Ltd.	
Wyper Brothers Ltd.	David Jones Ltd.	
Stott Datagraphics Ltd.	F. T. Wimble & Co. Ltd.	
Brandon Timbers Ltd.	Robb & Brown Ltd.	
Capital City Holdings (Aust.) Ltd.	Dominion Properties Ltd.	
McLeod, Kelso & Lee Holdings Ltd.	Spicer Street Investments Pty. Ltd.	
General Industries Ltd.	Wallloo Pty. Ltd.	
Travelodge Australia Ltd.	Southern Pacific Properties Ltd.	
Australian Guarantee Corporation Ltd.	Bank of New South Wales	
Herbert Adams Holdings Ltd.	Bunge (Industrial) Ltd.	*
Tulloch Ltd.	Regional Landholdings Ltd.	
Publishers Holdings Ltd.	Australian Consolidated Press Ltd.	
Refresh Holdings Ltd.	British Tobacco Co. (Aust.) Ltd.	*
Cowan Group (Holdings) Ltd.	H. Carter and R. K. Evans	
PGH Industries Ltd.	F & T Industries Ltd.	
The Leviathan Ltd.	Walsh's Holdings Ltd.	
White Crow Ltd.	Unigate Aust. Pty. Ltd.	*
Toledo-Berkel (Aust.) Ltd.	Reliance Electrical International Finance Co.	*
Wreckair Holdings Ltd.	Consolidated Pneumatic Tool Co. Ltd.	
I.C.D. Ltd.	St. James Properties Ltd.	
Preferred Investments Ltd.	Cofive Pty. Ltd.	
Coates & Co. Ltd.	Australian National Industries Ltd.	
Murumba Minerals N.L.	Intercontinental Credit Ltd.	
Industrial Sales Holdings Ltd.	Coventry Motor Replacements Ltd.	
Yencken Glass Industries Ltd.	Burns, Philp & Co. Ltd.	
Musgrave's Ltd.	Metro Industries Ltd.	
Tarax Drinks Holdings Ltd.	Cadbury Schweppes Australia Ltd.	*
Nationwide Finance Ltd.	Cork Investments Ltd.	*
Hardware Holdings Ltd.	National Consolidated Ltd.	
Ford Sherington Holdings Ltd.	Revere Development Pty. Ltd.	
Frank G. O'Brien Ltd.	Vitrum Holdings Ltd.	
Silverton Transport and General Industries Ltd.	Temperance and General Mutual Life Assurance Society Ltd.	
Kings Parkade Ltd.	National Mutual Life Association of Australasia Ltd.	
James Wallace Holdings Ltd.	Forestwood Australasia Ltd.	
P. & H. Holdings Ltd.	Halifax Holdings (Aust.) Ltd.	
Valentine Holdings Ltd.	Textron Pacific Pty. Ltd.	
Geoff K. Gray (Holdings) Ltd.	Winchcombe, Carson Ltd.	
Duncan Industries Ltd.	Tour Finance Ltd.	
The Country Producers' Selling Co. Ltd.	Toepar Pty. Ltd.	
David Lynn Ltd.	Gilda Enterprises Pty. Ltd.	
Amagrazie Ltd.	F. J. Walker Ltd.	
Henry Jones (IXL) Ltd.	Food Canning Industries Pty. Ltd.	
Freighter Industries Ltd.	Freighter Franklin Ltd.	
Wridgways Holdings Ltd.	Anset Transport Industries Ltd.	
Steelmark Ltd.	Australian National Industries Ltd.	
Supermarket Ltd.	Commercial Finance Company Ltd.	
Associated Investments Ltd.	Deeds and Documents Pty. Ltd.	
Bryants Ltd.	Direct Acceptance Corporation Ltd.	
Land Planning and Development Ltd.	Eichern (Holdings) Pty. Ltd.	
		Ipec Insurance Group

APPENDIX E

Commonwealth Companies (Foreign Take-overs) Act 1972

COMMONWEALTH OF AUSTRALIA

Companies (Foreign Take-overs) Act 1972

No. 134 of 1972

AN ACT

To control Foreign Take-overs of certain Australian Companies.

[Assented to 2 November 1972]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Companies (Foreign Take-overs) Act* Short title. 1972.

2.—(1) This Act shall come into operation on the seventh day after the day on which it receives the Royal Assent. Commencement and expiration.

(2) This Act shall cease to be in operation on the expiration of the thirty-first day of December, One thousand nine hundred and seventy-three, and shall thereupon be deemed to have been repealed by an Act other than this Act.

3. Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if the following word and paragraph were added at the end of section 5:— Additional operation of Act.

“; of (c) is the holding company of a body corporate of a kind referred to in either of the last two preceding paragraphs,”

4.—(1) In this Act, unless the contrary intention appears—

Interpretation.

“Australia” includes all the Territories of the Commonwealth, whether forming part of the Commonwealth or not;

“foreign corporation” means a corporation—

(a) in respect of which—

- (i) a person (other than a corporation) not ordinarily resident in Australia;
- (ii) a corporation incorporated, formed or otherwise organized elsewhere than in Australia; or
- (iii) two or more persons who are associated with one another and at least one of whom is a person referred to in sub-paragraph (i) of this paragraph or a corporation referred to in the last preceding sub-paragraph,

is or are entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than three-twentieths of the total number of votes in respect of shares in the corporation; or

(b) in respect of which two or more persons each of whom is a person referred to in sub-paragraph (i) of the last preceding paragraph or a corporation referred to in sub-paragraph (ii) of that paragraph are entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of shares in the corporation;

“foreign person” means—

- (a) a person (other than a corporation) who is not ordinarily resident in Australia; or
- (b) a foreign corporation;

“invitation” means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to dispose of that right;

“offeror”, in relation to a take-over offer in respect of shares in a company to which this Act applies, means an offeror as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated;

“order” includes interim order;

“person” includes a corporation;

“take-over offer”, in relation to shares in a company to which this Act applies, means a take-over offer as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated;

“take-over scheme”, in relation to shares in a company to which this Act applies, means a take-over scheme as defined by the law relating to companies that is in force in the State or Territory in which the company is incorporated.

(2) For the purposes of this Act—

- (a) a reference to a share in a company to which this Act applies or in a corporation other than such a company shall be read as a reference to a share in the capital of the company or of the corporation, as the case may be;
- (b) a reference to a share in a company to which this Act applies or in a corporation other than such a company shall be read as including a reference to stock into which a share has been converted;
- (c) a person shall be taken to be the beneficial owner of shares if, and only if, those shares are held in any manner in whole or in part for the use or benefit of the person; and
- (d) a corporation shall be taken not to be a foreign corporation if the Minister is satisfied that, having regard to all the circumstances, persons or corporations, or persons and corporations, referred to in the definition of "foreign corporation" in the last preceding subsection are not in a position to exercise a significant degree of control over the conduct of the affairs of the corporation.

5. A reference in this Act to a company to which this Act applies is a reference to a body corporate that—

- (a) is a trading corporation formed within the limits of the Commonwealth or is a financial corporation so formed; or
- (b) is incorporated in a Territory of the Commonwealth, other than Papua New Guinea, under the law in force in that Territory relating to companies.

6. The obligation to comply with this Act extends to all natural persons, whether resident in Australia or not and whether Australian citizens or not, and to all bodies corporate, whether incorporated or carrying on business in Australia or not.

7. This Act applies both within and outside Australia and extends to all the Territories of the Commonwealth, whether forming part of the Commonwealth or not.

8. For the purposes of this Act, a reference to control of the exercise of the right to cast a vote in respect of a share in a company to which this Act applies, or to control of the exercise of the right to cast a vote in respect of a share in any other corporation, shall be read as including a reference to control of that right that is direct or indirect, including control that is exercisable—

- (a) as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights; or
- (b) by reason or a person being in a position to control a corporation or corporations.

9. For the purposes of this Act—

- (a) a person (other than a corporation) shall be deemed to be in a position to control a corporation if he alone is, or he and a person with whom he is associated are together, in a position to control

not less than three-twentieths of the total of the rights to cast votes in respect of shares in that corporation;

- (b) a corporation shall be deemed to be in a position to control another corporation if it alone is, or it and a person with whom it is associated are together, in a position to control not less than three-twentieths of the total of the rights to cast votes in respect of shares in that other corporation;
- (c) a person who is or is to be deemed to be in a position to control a corporation which, or a person who, is or is to be deemed to be in a position to control another corporation shall be deemed to be in a position to control that last-mentioned corporation; and
- (d) a person who is or is to be deemed to be in a position to control a corporation shall be deemed to be in a position to control the exercise of any right of that corporation to cast a vote in respect of a share in another corporation.

10.—(1) For the purposes of this Act, a person shall be deemed to be associated with another person in relation to a corporation if, and only if—

- (a) one of the persons is a corporation and the other person is an officer of that corporation;
- (b) one person is a partner of the other person;
- (c) one of the persons is a corporation and the other person, whether a corporation or not, is in a position to control that corporation; or
- (d) both persons are corporations and one person, whether a corporation or not, is in a position to exercise control over both of those persons.

(2) Where, by reason of the last preceding sub-section—

- (a) one person is to be deemed to be associated with another person in relation to a corporation; and
- (b) another person is also to be deemed to be associated with either of the persons referred to in the last preceding paragraph in relation to that corporation,

each of those persons and that other person shall, for the purposes of this Act, be deemed to be associated with one another.

11. For the purposes of this Act, a substantial number of voting shares in a company shall be taken to be owned by foreign persons if, and only if—

- (a) a foreign person alone is, or a foreign person and another person or other persons with whom the foreign person is associated are together, in a position to control not less than three-twentieths of the total of the rights to cast votes in respect of shares in the company; or
- (b) two or more foreign persons, and any persons with whom any of those foreign persons is associated, are together in a position to control not less than two-fifths of the total of the rights to cast votes in respect of shares in the company.

12. The question whether a body corporate is the holding company of another body corporate for the purposes of this Act shall be determined in the same manner as the question whether a corporation is the holding company of another corporation is determined under the *Companies Ordinance* 1962–1972 of the Australian Capital Territory or, if that Ordinance is amended, under that Ordinance as amended.

13.—(1) This section applies where—

- (a) a take-over offer has been made, or two or more take-over offers that form part of a take-over scheme have been made, whether before or after the commencement of this Act, in relation to shares in a company to which this Act applies; or
- (b) the Minister has reason to believe that—
 - (i) an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) has been made, or two or more such offers have been made, whether before or after the commencement of this Act, to sell or purchase shares in a company to which this Act applies;
 - (ii) negotiations are taking place, or are about to take place, with respect to the purchase of shares in a company to which this Act applies and an agreement to purchase shares in that company is likely to be entered into as a result of the negotiations; or
 - (iii) a company to which this Act applies is proposing to issue shares in the company.

(2) In a case to which paragraph (a) of the last preceding sub-section applies, where—

- (a) if the take-over offer or some or all of the take-over offers were accepted, a substantial number of voting shares in the company would be owned by foreign persons, whether or not a substantial number of voting shares in the company are already owned by those persons; and
- (b) the Minister is satisfied that—
 - (i) foreign persons are not in a position to exercise effective control of the company but, if the take-over offer or some or all of the take-over offers were accepted, foreign persons would, as a result of the acceptance of the take-over offer or of some or all of the take-over offers, be in a position to exercise effective control of the company; and
 - (ii) the exercise of that control would be contrary to the national interest,

the Minister—

- (c) may make an order expressed to prohibit the implementation of the take-over offer or take-over offers; and

(d) where he makes such an order, may also make an order expressed to direct that the foreign persons last mentioned in sub-paragraph (i) of paragraph (b) of this sub-section, and any persons who are associated with any of those foreign persons, shall not together be the beneficial owners of shares in the company carrying more than—

(i) the fraction of the total of the rights to cast votes in respect of shares in the company that was carried by the shares in the company of which those foreign persons, and any persons who are associated with any of those foreign persons, were the beneficial owners immediately before the day on which the order comes into operation; or

(ii) three-twentieths of that total,

whichever is the greater.

(3) In a case to which paragraph (b) of sub-section (1) of this section applies, where—

(a) if the offer or some or all of the offers were accepted, the agreement were entered into, or the shares were issued, a substantial number of voting shares in the company would be owned by foreign persons, whether or not a substantial number of voting shares in the company are already owned by those persons; and

(b) the Minister is satisfied that—

(i) foreign persons are not in a position to exercise effective control of the company but, if the offer or some or all of the offers were accepted, the agreement were entered into, or the shares were issued, foreign persons would, as a result of the acceptance of the offer or of some or all of the offers, the entering into of the agreement, or the issue of the shares, be in a position to exercise effective control of the company; and

(ii) the exercise of that control would be contrary to the national interest,

the Minister—

(c) may make an order expressed to prohibit the acceptance of the offer or offers, the entering into of the agreement, or the issue of the shares, as the case may be; and

(d) where he makes such an order, may also make an order expressed to direct that the foreign persons last mentioned in sub-paragraph (i) of paragraph (b) of this sub-section, any any persons who are associated with any of those foreign persons, shall not together be the beneficial owners of shares in the company carrying more than—

(i) the fraction of the total of the rights to cast votes in respect of shares in the company that was carried by the shares in the company of which those foreign persons, any any persons who are associated with any of those foreign persons, were the beneficial owners immediately before the day on which the order comes into operation; or

(ii) three-twentieths of that total,
whichever is the greater.

(4) Where the Minister makes an order of a kind referred to in paragraph (d) of sub-section (2) or paragraph (d) of sub-section (3) of this section, he may specify in the order, in lieu of the fraction of three-twentieths referred to in that paragraph, a greater fraction.

(5) The Minister shall not treat persons referred to in sub-section (2) or sub-section (3) of this section as being in a position to exercise effective control of a company if he is satisfied that, having regard to all the circumstances, those persons are not in a position to exercise a significant degree of control over the conduct of the affairs of the company.

(6) For the purpose of enabling due consideration to be given to the question whether an order should be made under sub-section (2) or sub-section (3) of this section in relation to a company to which this Act applies, the Minister may make an interim order expressed to prohibit, for such period, not exceeding three months, as is specified in the order—

- (a) in a case to which paragraph (a) of sub-section (1) of this section applies—the implementation of the take-over offer or take-over offers;
- (b) in a case to which sub-paragraph (i) of paragraph (b) of that sub-section applies—the acceptance of the offer or offers;
- (c) in a case to which sub-paragraph (ii) of paragraph (b) of that sub-section applies—the entering into of an agreement of a particular description by the parties to the negotiations; or
- (d) in a case to which sub-paragraph (iii) of paragraph (b) of that sub-section applies—the issue of shares to a person referred to in the order.

(7) Where—

- (a) a notice in writing that a take-over offer has been made in relation to shares in a specified company to which this Act applies is received by the Minister from the offeror;
- (b) a notice in writing that an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over-offer) has been made to sell or purchase shares in a specified company to which this Act applies is received by the Minister from the person who made the offer; or
- (c) a notice in writing that a company to which this Act applies is proposing to issue shares is received by the Minister from the company,

and the Minister does not, before the expiration of one month after the date on which the notice is received by him, make and order under this section in relation to the take-over offer, the offer or the issue of the shares, as the case may be, the Minister is not empowered, after the expiration of that period of one month, to make an order under this section in relation to the take-over offer, the offer or the issue of the shares.

(8) Where before the commencement of this Act, a public announcement was made, or the Government of the Commonwealth received a notification, that a specified person had made a take-over offer in relation to shares in a specified company to which this Act applies, a specified person had made an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares in a specified company to which this Act applies or a specified company to which this Act applies proposed to issue shares and—

- (a) the person who made the take-over offer or other offer or the company that proposed to issue the shares received before the commencement of this Act a notification in writing from the Government of the Commonwealth to the effect that the Government did not object to the take-over offer or other offer or to the issue of the shares;
- (b) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, ended before the commencement of this Act—the person who made the take-over offer or other offer or the company that proposed to issue the shares did not receive a notification in writing from the Government within that period of one month to the effect that—
 - (i) the Government considered that the acceptance of the take-over offer or, in the case of a take-over offer being an invitation, of an offer made in pursuance of the take-over offer, the acceptance of the other offer or the issue of the shares would be contrary to the national interest; or
 - (ii) the Government proposed to give further consideration to the question whether the acceptance of the take-over offer or, in the case of a take-over offer being an invitation, of an offer made in pursuance of the take-over offer, the acceptance of the other offer or the issue of the shares would be contrary to the national interest; or
- (c) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, did not end before the commencement of this Act—the Minister did not, before the expiration of that period of one month, make and order under this section in relation to the take-over offer, the other offer or the issue of the shares,

the Minister is not empowered to make an order under this section in relation to the take-over offer, the other offer or the issue of the shares, as the case may be.

(9) The Minister may at any time make an order revoking an order made under this section.

(10) Where the Minister makes an order under paragraph (c) of sub-section (2), or sub-section (6), of this section expressed to prohibit the

implementation of a take-over offer, a person shall not, while the order is in force—

- (a) in the case of a take-over offer constituted by an offer to purchase shares—accept the offer; or
- (b) in the case of a take-over offer constituted by an invitation to sell shares—offer to sell shares in pursuance of the invitation or accept such an offer to sell shares.

Penalty: Fifty thousand dollars or imprisonment for six months.

(11) Where the Minister makes an order under paragraph (c) of sub-section (3), or sub-section (6), of this section—

- (a) in the case of an order expressed to prohibit the acceptance of an offer—a person shall not, while the order is in force, accept the offer;
- (b) in the case of an order expressed to prohibit the entering into of an agreement by the parties to negotiations—a person who is or was a party to those negotiations shall not, while the order is in force, enter into such an agreement; or
- (c) in the case of an order expressed to prohibit a company from issuing shares to a person—the company shall not, while the order is in force, issue shares in the company to that person.

Penalty: Fifty thousand dollars or imprisonment for six months.

(12) A person shall not contravene an order in force under paragraph (d) of sub-section (2), or paragraph (d) of sub-section (3), of this section.

Penalty for a contravention of this sub-section: Two hundred dollars for each day during which the contravention continues.

14.—(1) Where—

- (a) a substantial number of voting shares in a company to which this Act applies are owned by foreign persons but would not be so owned but for—
 - (i) the acceptance after the twenty-sixth day of September, One thousand nine hundred and seventy-two, of an offer or offers to purchase shares in that company, being an offer or offers that constituted a take-over offer or take-over offers in relation to the shares;
 - (ii) the acceptance after that date of an offer or offers to sell shares in that company, being an offer or offers made in pursuance of an invitation or invitations that constituted a take-over offer or take-over offers in relation to the shares;
 - (iii) the acceptance after that date of any other offer or offers for the sale or purchase of shares in that company; or
 - (iv) the issue after that date of shares in that company not being an issue made at a time when a substantial number of voting shares in that company were already owned by foreign persons; and

(b) the Minister is satisfied that—

(i) the foreign person concerned is, or the foreign persons concerned are, in a position to exercise effective control of that company; and

(ii) the exercise of that control would be contrary to the national interest,

the Minister may make an order expressed to direct that that person or those persons, and any persons who are associated with that person or any of those persons, shall not together be the beneficial owners of shares in the company carrying more than a fraction specified in the order of the total of the rights to cast votes in respect of shares in the company.

(2) The Minister shall not treat a person or persons referred to in the last preceding sub-section as being in a position to exercise effective control of a company if he is satisfied that, having regard to all the circumstances, that person is not or those persons are not in a position to exercise a significant degree of control over the conduct of the affairs of the company.

(3) For the purposes of an order made under sub-section (1) of this section in relation to a person, the beneficial ownership by that person of any shares in the company concerned of which that person was the beneficial owner immediately before the twenty-seventh day of September, One thousand nine hundred and seventy-two, shall be disregarded.

(4) For the purposes of an order made under sub-section (1) of this section, the beneficial ownership by a person of any shares in the company concerned of which the person became the beneficial owner before the commencement of this Act shall be disregarded where, before the commencement of this Act, a public announcement was made, or the Government of the Commonwealth received a notification, that an act had been, or was proposed to be, done that would or might result in the person becoming the beneficial owner of those shares and—

(a) the person or company received before the commencement of this Act a notification in writing from the Government of the Commonwealth to the effect that the Government did not object to the person becoming, or to the doing of any act that would result in his becoming, the beneficial owner of those shares;

(b) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, ended before the commencement of this Act—neither the person nor the company received a notification in writing from the Government within that period of one month to the effect that—

(i) the Government considered that the doing of that act was or would be contrary to the national interest; or

(ii) the Government proposed to give further consideration to the question whether the doing of that act was or would be contrary to the national interest; or

(c) if the period of one month immediately following the date of that announcement, the date on which the Government of the Commonwealth received that notification, or the twenty-sixth day of September, One thousand nine hundred and seventy-two, whichever was the latest date, did not end before the commencement of this Act—the Minister did not before the expiration of that period of one month make an order under the last preceding section in relation to the doing of that act.

(5) Where the Minister receives a notice in writing from the person or company concerned that an act has been or is proposed to be done that would or might result in a specified person becoming the beneficial owner of shares in a specified company to which this Act applies, and the Minister does not, before the expiration of one month after the date on which the notice is received by him, make an order under the last preceding section in relation to the doing of that act, the beneficial ownership by the person of the shares shall be disregarded for the purposes of an order made under sub-section (1) of this section in relation to that person.

(6) A person shall not contravene an order in force under this section.

Penalty: Two hundred dollars for each day during which the contravention continues.

15.—(1) Where a person (in this section referred to as “the foreign owner”) has failed to comply with an order in force under paragraph (d) of sub-section (2), or paragraph (d) of sub-section (3), of section 13, or section 14, of this Act, the Supreme Court of a State or Territory of the Commonwealth, being a court that has jurisdiction for the purpose by virtue of sub-section (9) or sub-section (10) of this section, may, on the application of the Minister, whether or not that failure still continues, and whether or not other proceedings in respect of that failure have been instituted, make one or more of the following orders:—

- (a) an order restraining the exercise of any voting or other rights attached to any share in the company concerned of which the foreign owner is the beneficial owner;
- (b) an order directing the company concerned not to make payment, or to defer making payment, of any sum due from the company in respect of any share in the company of which the foreign owner is the beneficial owner;
- (c) an order directing the sale of all or any of the shares in the company concerned of which the foreign owner is the beneficial owner;
- (d) an order that any exercise of the voting or other rights attached to specified shares in the company concerned of which the foreign owner is the beneficial owner be disregarded;
- (e) for the purpose of securing compliance with any other order made under this section, an order directing the company concerned or any other person to do or refrain from doing a specified act.

(2) An order under this section may include such ancillary or consequential provisions as the court thinks just.

(3) The court shall, before making an order under this section and in determining the terms of such an order, satisfy itself, so far as it can reasonable do so, that the order would unfairly prejudice any person.

(4) The court shall not make an order under sub-section (1) of this section, other than an order restraining the exercise of voting rights, if it is satisfied—

(a) that the failure of the foreign owner to comply as mentioned in sub-section (1) of this section was due to his inadvertence or mistake or to his not being aware of a fact or occurrence the existence of which was necessary to constitute that failure; and

(b) that, in all the circumstances, the failure ought to be excused.

(5) The court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

(6) A Supreme Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(7) A person shall not contravene or fail to comply with an order under this section that is applicable to him.

Penalty: One thousand dollars.

(8) The last preceding sub-section does not affect the powers of a Supreme Court in relation to the punishment of contempts of the court.

(9) The Supreme Court of each State is invested with federal jurisdiction for the purposes of the application of this section in relation to shares in a company other than a company incorporated in a Territory of the Commonwealth.

(10) Jurisdiction is conferred on the Supreme Court of each Territory of the Commonwealth for the purposes of the application of this section in relation to shares in a company incorporated in that Territory.

16.—(1) It is a defence to a prosecution for an offence against sub-section (12) of section 13, or sub-section (6) of section 14, of this Act if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence.

(2) For the purposes of the last preceding sub-section, a person shall conclusively be presumed to have been aware at a particular time of a fact or occurrence of which a servant or agent of the person, being a servant or agent having duties or acting in relation to his master's or principal's ownership of a share or shares in the company concerned, was aware at that time.

17.—(1) Where—

(a) the Minister is satisfied that—

(i) the acceptance of a particular offer or offers to purchase shares in a company to which this Act applies, being an

offer or offers constituting a take-over offer or take-over offers in relation to the shares;

- (ii) the acceptance of an offer or offers to sell shares in a company to which this Act applies, being an offer or offers made in pursuance of a particular invitation or invitations constituting a take-over offer or take-over offers in relation to the shares;
- (iii) the acceptance of a particular offer or offers (not being an offer or offers of a kind referred to in either of the last two preceding sub-paragraphs) for the sale or purchase of particular shares in a company to which this Act applies;
- (iv) the entering into an agreement by particular persons for the purchase of particular shares in a company to which this Act applies; or
- (v) the issue to a particular person of particular shares in a company to which this Act applies,

would not result in foreign persons being in a position to exercise effective control of the company; or

- (b) the Minister is satisfied that the exercise of effective control of a company to which this Act applies by particular foreign persons would not be contrary to the national interest,

he may give a certificate to that effect.

(2) Where a certificate given by the Minister in accordance with the last preceding sub-section is in force, the Minister is not empowered to make an order under paragraph (c) of sub-section (2), or paragraph (c) of sub-section (3), of section 13 of this Act—

- (a) in the case of a certificate in relation to a take-over offer or take-over offers—expressed to prohibit the implementation of that take-over offer or those take-over offers;
- (b) in the case of a certificate in relation to the acceptance of an offer or offers (not being an offer or offers constituting, or made in pursuance of an invitation or invitations constituting, a take-over offer or take-over offers) for the sale or purchase of shares in a company—expressed to prohibit the acceptance of that offer or those offers;
- (c) in the case of a certificate in relation to the entering into of an agreement for the purchase of shares in a company—expressed to prohibit the entering into of that agreement; or
- (d) in the case of a certificate in relation to the issue to a person of shares in a company—expressed to prohibit the issue of those shares to that person.

(3) Where there is in force a certificate by the Minister in accordance with sub-section (1) of this section—

- (a) in the case of a certificate to the effect that the doing of an act specified in the certificate would not result in foreign persons specified in the certificate being in a position to exercise effective control of a company to which this Act applies—the doing of that act shall be disregarded for the purposes of the application of sub-paragraph (i) to (iv), inclusive, of paragraph (a) of sub-section (1) of section 14 of this Act in relation to those foreign persons in relation to the company; or
- (b) in the case of a certificate to the effect that the exercise of effective control of a company to which this Act applies by foreign persons specified in the certificate would not be contrary to the national interest—the Minister is not empowered to make an order under section 14 of this Act in relation to those foreign persons in relation to the company.

(4) A certificate given under this section shall be published in the *Gazette*.

18. The doing of any act that constitutes an offence against this Act is, notwithstanding the commission of that offence, valid for all purposes.

19. An order made under this Act shall be in writing and published in the *Gazette* and takes effect—

- (a) except in a case to which the next succeeding paragraph applies—on the date of publication; or
- (b) in the case of an order referred to in section 14 of this Act—on such date as is specified in the order, being a date not earlier than thirty days after the date of publication.

20.—(1) Where the Minister has reason to believe that a person is capable of giving information or producing documents relating to matters that are relevant to the exercise by the Minister of his powers under this Act, he may, by notice in writing served on that person, require that person—

- (a) to furnish to him, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or
- (b) to produce to him, or to a person specified in the notice acting on his behalf, in accordance with the notice, any such documents.

(2) Without limiting by implication the generality of the last preceding sub-section, the power of the Minister under that sub-section to require a person to furnish information to the Minister includes the power—

- (a) to require a company to which this Act applies to furnish to the Minister the names and addresses of persons registered as the holders of shares in the company;
- (b) to require a person who is registered as the holder of shares in a company to which this Act applies to furnish to the Minister such information in the possession of the person as the Minister requires in relation to the beneficial ownership of the shares or in relation

to any trusts, agreements, arrangements, understandings and practices affecting the shares or any rights carried by the shares; and

(c) to require a person who has made a take-over offer in relation to shares in a company to which this Act applies or an offer (other than an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares in such a company to furnish to the Minister such information in the possession of the person as the Minister requires in relation to the offer.

(3) A person shall not—

- (a) refuse or fail to comply with a notice under this section to the extent that he is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly furnish information that is false or misleading.

Penalty: One thousand dollars or imprisonment for three months.

(4) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate him, but his answer to any question asked in the notice, or his furnishing of any other information in pursuance of the notice, is not admissible in evidence against him in any criminal proceedings other than proceedings under this Act.

21. The Commonwealth Industrial Court has jurisdiction to hear and determine proceedings for offences against this Act (including offences that are to be deemed to have been committed by reason of the operation of section 5 of the *Crimes Act 1914–1966*) and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

22. Proceedings for an offence against this Act shall not be instituted without the consent in writing of the Minister.

23. It is the intention of the Parliament that this Act shall not apply to the exclusion of any law of a State or Territory of the Commonwealth.

24. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

APPENDIX F

Sample Interim Order and Newspaper Advertisement under Foreign Take-Overs Act

CANBERRA, THURSDAY, 8 FEBRUARY

COMMONWEALTH OF AUSTRALIA

Companies (Foreign Take-overs) Act 1972

INTERIM ORDER

WHEREAS The Brickhouse Company Pty. Limited (hereinafter called 'Brickhouse'), a company incorporated in the State of Western Australia, is a company to which the Companies (Foreign Take-overs) Act 1972 applies;

AND WHEREAS Westlyn Investments Limited (hereinafter called 'Westlyn'), a company incorporated in the said State, the registered office of which is situate at Sixth Floor, Law Chambers, Cathedral Square, Perth, in the said State, is a foreign corporation being a corporation in respect of which Hume Holdings Limited, a company incorporated in the United Kingdom, the registered office of which is situate at 18 St. Swithin's Lane, London, E.C.4, England, is entitled to control the exercise of the right to cast votes in respect of approximately one-fifth of the total number of voting shares;

AND WHEREAS on the 8th day of January 1973 Westlyn made take-over offers forming part of a take-over scheme to all shareholders of Brickhouse registered as such on the said day in respect of their shares in the capital of Brickhouse;

NOW THEREFORE I, Frank Crean, the Treasurer of the Commonwealth, for the purpose of enabling due consideration to be given to the question whether an order should be made under sub-section (2) of section 13 of the said Act in relation to Brickhouse, by this interim order PROHIBIT for a period of three (3) months the implementation of the said take-over offers.

Dated this seventh day of February 1973.

FRANK CREAN
Treasurer.

AUSTRALIA COMPANIES (FOREIGN TAKE-OVERS) ACT 1972

Attention is drawn to the fact that an interim order has been made by the Treasurer under subsection (6) of section 13 of the Companies (Foreign Take-overs) Act, 1972, and published in the Australian Government Gazette on August 29, 1973, in respect of the proposed acquisition of shares in:

Row, Webb & Anderson Proprietary Limited
by Harrisons & Crosfield (A.N.Z.) Limited

Shareholders acting in contravention of the order render themselves liable to heavy penalties.

Source: *Australian Financial Review*, September 5th, 1973, p. 41

APPENDIX G

Sample Order of Prohibition under Foreign Take-Overs Act

Commonwealth of Australia Gazette

PUBLISHED BY AUTHORITY

BY THE AUSTRALIAN GOVERNMENT PUBLISHING SERVICE

No. 47

CANBERRA, THURSDAY, 19 APRIL

1973

AUSTRALIA

Companies (Foreign Take-overs) Act 1972

ORDER

WHEREAS Buchanan Borehole Collieries Pty. Limited (hereinafter referred to as 'Buchanan'), a company incorporated in the State of New South Wales, is a company to which the Companies (Foreign Take-overs) Act 1972 applies;

AND WHEREAS Mitsui & Co. (Australia) Limited (hereinafter referred to as 'Mitsui'), a company incorporated in the State of Victoria, the registered office of which is situated at 56 Pitt Street, Sydney in the State of New South Wales, is a foreign corporation being a corporation in respect of which Mitsui & Co. Limited a company constituted and validly existing under the laws of Japan, is entitled to exercise, or control the exercise of, the right to cast votes of not less than three-twentieths of the total number of votes in Mitsui;

AND WHEREAS I, Frank Crean, the Treasurer, have reason to believe that on the seventeenth day of July 1972, J. & K. Johnstone Holding Pty. Limited, a company incorporated in Australia of which Buchanan is a wholly owned subsidiary, offered to sell 25% of the voting shares in Buchanan to Mitsui;

AND WHEREAS if the said offer was accepted a substantial number of voting shares in Buchanan would be owned by Mitsui;

AND WHEREAS I, Frank Crean, the Treasurer aforesaid, am satisfied that foreign persons are not in a position to exercise effective control of Buchanan but, if the said offer was accepted Mitsui would, as a result, be in a position to exercise effective control of Buchanan;

AND WHEREAS I, Frank Crean, the Treasurer aforesaid, am satisfied that the exercise of that control would be contrary to the national interest;

NOW THEREFORE I, Frank Crean, the Treasurer aforesaid, by this order PROHIBIT, pursuant to paragraph (c) of sub-section (3) of section 13 of the said Act, the acceptance of the said offer.

Dated this eighteenth day of April 1973.

FRANK CREAN
Treasurer.

APPENDIX H

Committee on Foreign Takeovers

Material Information Required in Respect of a Foreign Takeover Proposal

Offeree Party

1. Name of offeror.
2. Name and address of offeree.

Details given should include the offeree's registered name, its head office address and telephone number and its postal address. The name, address and telephone number of an agent of the offeree for the purposes of the takeover may also be given.

3. Terms of offer.
4. Full details of beneficial ownership and control.

The offeree may submit that the acquisition would not give a significant degree of foreign control. Nevertheless, details should be given of present beneficial ownership and control, including substantial shareholdings by individual overseas interests and associated groups of overseas interests, substantial shareholdings by individual Australian interests and associated groups of Australian interests, the proportions of ownership held by foreign interests in the aggregate and by Australian interests in the aggregate and the proportion of voting rights exercisable by each of the foregoing classes of shareholder. Shareholdings and Voting rights held by persons or companies known to be nominees should be identified separately. Similar details in respect of all the foregoing classes of shareholder should be provided in respect of the ownership of any voting share options granted by the offeree, including options exercisable under the terms of debenture or preference share issues.

5. Particulars of the offeree.

Particulars given should include the values for the last three years as shown in the offeree's books of accounts of total assets, shareholders' funds, and net profits before tax.

6. Details of any existing associations with the offeror.

Details should be given of existing equity participation by the offeror in the offeree, including the date(s) on which the equity was acquired, the means of acquisition (e.g., a new share placement, a public offer or market purchases) and the proportion of the offeree's voting power associated with any existing equity holding. Details should also be given of other associations between the offeror and the offeree, including agreements relating to the provision of financial and technical assistance and to production and marketing. Particular reference should be made to any rights exercisable by the offeror under the terms of any such agreements to participate in the management and control of the offeree.

7. Industry of offeree.

A description should be given of the activities of the offeree. Estimates should be given of the value of each Australian market for the output of the industry or industries concerned and the offeree's share of each such market. Estimates should be given of the likely effects of the takeover on the relative balance of Australian-overseas ownership and control of the industry or industries concerned.

8. Offeror's experience in the offeree's area of activity.

Information should be given regarding any relevant experience and special skills by the offeror in the offeree's areas of management, production and marketing.

9. Details of competition and/or complementarity between the offeree and offeror in production or marketing and of any degree of dependence between the offeree and the offeror in production or marketing.

10. Details of patents, manufacturing rights and export franchises held by offeree.

11. Details of export earnings by offeree in the last three financial years.

12. Economic benefits expected to result from the takeover.

Details should be given of economic benefits and costs which, as a result of the takeover, could be expected to accrue to the offeror, the offeree, the industry, industry suppliers and consumers in such areas as production, prices, quality and range of products and services, efficiency and technological change. Information should be supplied on the location of existing Australian plant of both the offeror and offeree, their existing plant capacities and whether and to what extent rationalisation of production, marketing and management is contemplated.

13. Effects of the takeover on the offeree's practices and on Government policy objectives.

Details should be given of changes expected as a result of the takeover in the offeree's practices in matters such as exports, imports, local processing of materials produced, research and development and industrial relations, including employee protection. Where the offeree considers that the takeover is likely to have environmental, defence and regional development effects, any such expected effects should be indicated.

14. Australian participation in the offeree after the takeover and shareholders' interests.

Details should be given on the proposed extent of Australian participation in ownership and management following the takeover. With regard to shareholders' interests, the offeree company should state the attitude of its board of directors to the offer.

NOTE: All values should be expressed in Australian dollars.

APPENDIX I

Acquisition of Real Estate by Overseas Interests

The following is the text of a press statement by the Treasurer on 20 March 1973 concerning acquisition of real estate by overseas interests.

"The Treasurer, Mr. Crean, today referred to the Government's concern about the ownership and control of Australia's natural resources and industries.

Mr. Crean confirmed that, as part of the whole question of foreign ownership and control, the question of purchases of real estate in Australia by overseas interests was under study by the Government. He said that the subject was a complex one, relating as it did to many different classes of transactions in all parts of the country, and that the study would take a little time to complete. Decisions taken in the light of the study would be announced in due course.

The Treasurer said that the study by the Government was concerned primarily with overseas investment in property development, such as the purchase of real estate for sub-division and resale for residential purposes or the purchase of city or suburban blocks for offices, shopping and industrial development, and overseas investment in rural properties. However, the Treasurer said that it could be assumed that foreign investment in real estate which was purely incidental to other purposes, such as the establishment or expansion of a factory, or investment by an individual in a block of land for his own use while employed in Australia or on retirement would not be affected.

Mr. Crean pointed out that some real estate transactions by overseas interests might be subject to Companies (Foreign Takeovers) Act, 1972, where they involved the acquisition of shares in companies. In such cases, the overseas interests concerned should consult the Committee on Foreign Takeovers about their proposals. He added that, pending the outcome of the Government's study, the Reserve Bank would not normally grant Exchange Control approvals that might be needed in connection with proposed foreign investment in real estate.

In conclusion, the Treasurer stressed that it was the wish of the Government that overseas interests should not enter into significant commitments for real estate purchases for the time being."

APPENDIX J

Commonwealth Trade Practices Bill 1973 Clauses 88-91

1973

Trade Practices

No.

PART VII—AUTHORIZATIONS AND CLEARANCES IN RESPECT OF RESTRICTIVE TRADE PRACTICES

Division 1—Authorizations

88. (1) Subject to this Part, the Commission may, upon application by or on behalf of a corporation, grant an authorization to the corporation to make a contract, or engage in or be a party to a combination, that would be in restraint of trade or commerce or to continue to be a party to a contract or combination in restraint of trade or commerce that was made before the expiration of the period referred to in sub-section 2 (4), and, while such an authorization remains in force—

Power of
Commission
to grant
authorizations.

- (a) in the case of an authorization to make a contract—
 - (i) sub-section 45 (2) does not prevent the corporation from making the contract in accordance with the authorization; and
 - (ii) a contract made in accordance with the authorization is not unlawful by reason of sub-section 45 (1);
- (b) in the case of an authorization to continue to be a party to a contract—the contract is not unlawful by reason of sub-section 45 (1); or
- (c) in the case of an authorization to engage in, or be or continue to be a party to, a combination—sub-section 45 (2) does not prevent the corporation from engaging in, or being or continuing to be a party to, the combination in accordance with the authorization.

(2) Sub-section (1) does not apply in relation to a contract or combination having the purpose or effect of fixing, controlling or maintaining the price for any goods or services supplied by the parties to the contract, or by the persons who are engaging in or are the parties to the combination, or by any of them, to persons not being parties to the contract or not engaging in or being parties to the combination.

(3) An authorization under sub-section (1) to make a contract or to engage in or be a party to a combination may be expressed so as to apply to a corporation that becomes a party to the contract, or commences to engage in or becomes a party to the combination, after the authorization is granted.

(4) The Commission does not have power to grant an authorization under sub-section (1) to a corporation to continue to be a party to a contract or combination that was made before the expiration of the period referred to in sub-section 2 (4) unless—

- (a) the authorization is granted before the expiration of that period; or

Procedure
for
applications.

(b) the authorization is granted under the expiration or revocation of another authorization granted to the corporation under that sub-section in relation to the contract or combination.

(5) Subject to this Part, the Commission may, upon application by a corporation, grant an authorization to the corporation to do an act, or engage in a course of conduct, that would constitute engaging in the practice of exclusive dealing and, while such an authorization remains in force, section 47 does not prevent the corporation from doing that act, or engaging in that course of conduct, in accordance with the authorization.

(6) Subject to this Part, the Commission may, upon application by a corporation, grant an authorization to the corporation to acquire shares in the capital, or to acquire assets, of a body corporate and, while such an authority remains in force, section 50 does not prevent the corporation from acquiring shares in the capital, or from acquiring assets, of the body corporate in accordance with the authorization.

89. (1) An application for an authorization shall be made in writing as prescribed.

(2) The Commission shall cause to be made public in such manner as it thinks fit notice of the receipt by the Commission of an application for an authorization.

(3) The Commission shall keep a register of applications for authorizations received by it.

(4) Subject to sub-sections (5) and (6), the register kept under sub-section (3) shall include—

- (a) any document furnished to the Commission in relation to an application for an authorization;
- (b) particulars of any oral submission made to the Commission in relation to such an application; and
- (c) the determination of the Commission on such an application and the statement of the reasons given by the Commission for that determination.

(5) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any document or for any other reason, the Commission may direct that a document referred to in paragraph (4) (a) or (b) shall not be included in the register kept under sub-section (3).

(6) A document shall not be included in the register kept under sub-section (3) if a direction in relation to that document is in force under paragraph 22 (1) (b).

(7) Where a corporation makes an application for an authorization under sub-section 88 (6) in relation to the acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act* 1972 applies, the corporation shall furnish a copy of the application to the Minister administering that Act.

90. (1) The Commission shall, in respect of an application for an authorization—

Determination of applications for authorizations.

(a) make a determination in writing granting such authorization as it considers appropriate; or

(b) make a determination in writing dismissing the application.

(2) The Commission shall take into account any submissions in relation to the application made to it by the applicant or any other person and may, where it considers it appropriate to do so, hold a public hearing in relation to the application.

(3) Where the Commission decides to hold a public hearing in relation to an application, the Commission shall cause notice of the time and place at which the hearing is to commence to be made public in such manner as it thinks fit.

(4) The Commission shall state in writing its reasons for a determination made by it.

(5) Subject to sub-sections (9) and (11), the Commission shall not make a determination granting an authorization unless it is satisfied that—

(a) the contract, combination, act or course of conduct, to which the application relates results, or is likely to result, in a specific and substantial benefit to the public, being a benefit that would not otherwise be available; or

(b) the contract, combination, act or course of conduct to which the application relates has such a slight effect on competition (other than competition in respect of markets outside Australia) that the contract, combination, act or course of conduct may be disregarded.

and that, in all the circumstances, the existence of the matters referred to in paragraph (a) or (b), as the case may be, justifies the granting of the authorization.

(6) Subject to sub-sections (7) and (8), the Commission shall determine an application for an authorization under sub-section 88 (6) within four months from the prescribed date.

(7) If the applicant for an authorization under sub-section 88 (6) informs the Commission in writing before the expiration of the period referred to in sub-section (6) that the applicant agrees to the Commission taking a specified longer period for the determination of the application, that longer period shall be deemed to be substituted in sub-section (6) for the period referred to in that sub-section.

(8) For the purposes of an application of sub-section (7), a reference in that sub-section to the period referred to in sub-section (6) shall, if another period is deemed to have been substituted in sub-section (6) for that period by any other application or applications of sub-section (7), be construed as a reference to that other period.

(9) Subject to sub-section (10), where—

- (a) an application is made for an authorization under sub-section 88 (6) in relation to the acquisition of shares in the capital, or assets, of a body corporate; and
- (b) the Attorney-General by notice in writing to the Commission informs the Commission that the Australian Government considers that there are special considerations relating to the acquisition that makes it desirable in the interests of national economic policy that an authorization be granted in respect of the acquisition,

the Commission shall grant the authorization.

(10) The Commission shall not begin to consider an application for an authorization under sub-section 88 (6) in relation to the acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act 1972* applies unless the applicant has furnished to the Commission a certificate given in accordance with sub-section 17 (1) of that Act in respect of the shares.

(11) If the applicant for an authorization referred to in sub-section (10) furnishes to the Commission under that sub-section a certificate given in accordance with paragraph 17 (1) (b) of the *Companies (Foreign Take-overs) Act 1972* in respect of the shares to which the application relates, the Commission shall grant the authorization.

(12) Where the applicant for an authorization referred to in sub-section (10) has furnished a notice of a kind referred to in sub-section 13 (7) of the *Companies (Foreign Take-overs) Act 1972* to the Minister administering that Act in relation to the acquisition of shares to which the application relates and that Minister—

- (a) has not, before the expiration of one month after the date on which the notice was received by him, made an order under section 13 of that Act in relation to the acquisition of those shares; or
- (b) has made an interim order under sub-section 13 (6) of that Act in relation to the acquisition of those shares and—
 - (i) has not, before the expiration of that interim order, made an order under sub-section 13 (2) or (3) of that Act; or
 - (ii) has revoked that interim order and has not forthwith made an order in relation to the acquisition of those shares under sub-section 13 (2) or (3) of that Act,

sub-section (10) does not apply in relation to the acquisition of those shares.

(13) If the applicant for an authorization referred to in sub-section (10) furnishes to the Commission a statutory declaration by a competent officer of the applicant in relation to a matter referred to in sub-section (12), that statutory declaration shall, in the absence of any evidence to the contrary, be accepted by the Commission as evidence of that matter.

(14) For the purposes of sub-section (6), the prescribed date is—

- (a) in the case of an application for an authorization in respect of a proposed acquisition of shares in the capital of a body corporate that is a company to which the *Companies (Foreign Take-overs) Act 1972* applies—

- (i) in a case to which sub-paragraphs (ii), (iii) and (iv) of this paragraph do not apply—the date on which a certificate given in respect of the shares in accordance with sub-section 17 (1) of that Act is furnished to the Commission;
- (ii) in a case to which paragraph (12) (a) applies—the date referred to in sub-paragraph (i) of this paragraph or the last day of the period of one month referred to in paragraph (12) (a), whichever first occurs;
- (iii) in a case to which sub-paragraph (12) (b) (i) applies—the date referred to in sub-paragraph (i) of this paragraph or the date of expiration of the interim order, whichever first occurs; or
- (iv) in a case to which sub-paragraph (12) (b) (ii) applies—the date referred to in sub-paragraph (i) of this paragraph or the date of revocation of the interim order, whichever first occurs; and

(b) in any other case—the date on which the application is received by the Commission.

91. (1) An authorization may be expressed to be in force for a period specified in the authorization and, if so expressed, remains in force for that period only.

Grant,
revocation
and variation
of authoriza-
tions.

- (2) If the Commission considers that it is appropriate to do so—
 - (a) for the purpose of enabling due consideration to be given to an application for an authorization; or
 - (b) pending the expiration of the time allowed for the making of an application to the Tribunal for review of a determination by the Commission of an application for an authorization and, if such an application for a review is made, pending the making of a determination by the Tribunal on the review,

the Commission may grant an authorization that is expressed to be an interim authorization, and the Commission may at any time revoke such an authorization.

(3) An authorization may be expressed to be subject to such conditions as are specified in the authorization.

(4) If, at any time after the Commission has granted an authorization, it appears to the Commission that the authorization was granted on the basis of evidence or information that was false or misleading in a material particular, that a condition to which the authorization was expressed to be subject has not been complied with or that there has been a material change of circumstances since the authorization was granted—

- (a) the Commission shall give notice accordingly to the corporation to which the authorization was given and any other persons who appear to the Commission to be interested and afford them a reasonable opportunity of making submissions to the Commission in the matter; and

(b) where, after so notifying the corporation and other persons (if any) and considering any submissions made by those persons, the Commission is satisfied that the authorization was granted on the basis of evidence or information that was false or misleading in a material particular, that the condition has not been complied with or that there has been such a material change of circumstances, the Commission may make a determination revoking the authorization and, if it considers it appropriate to do so, granting a further authorization in substitution for the authorization so revoked.

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